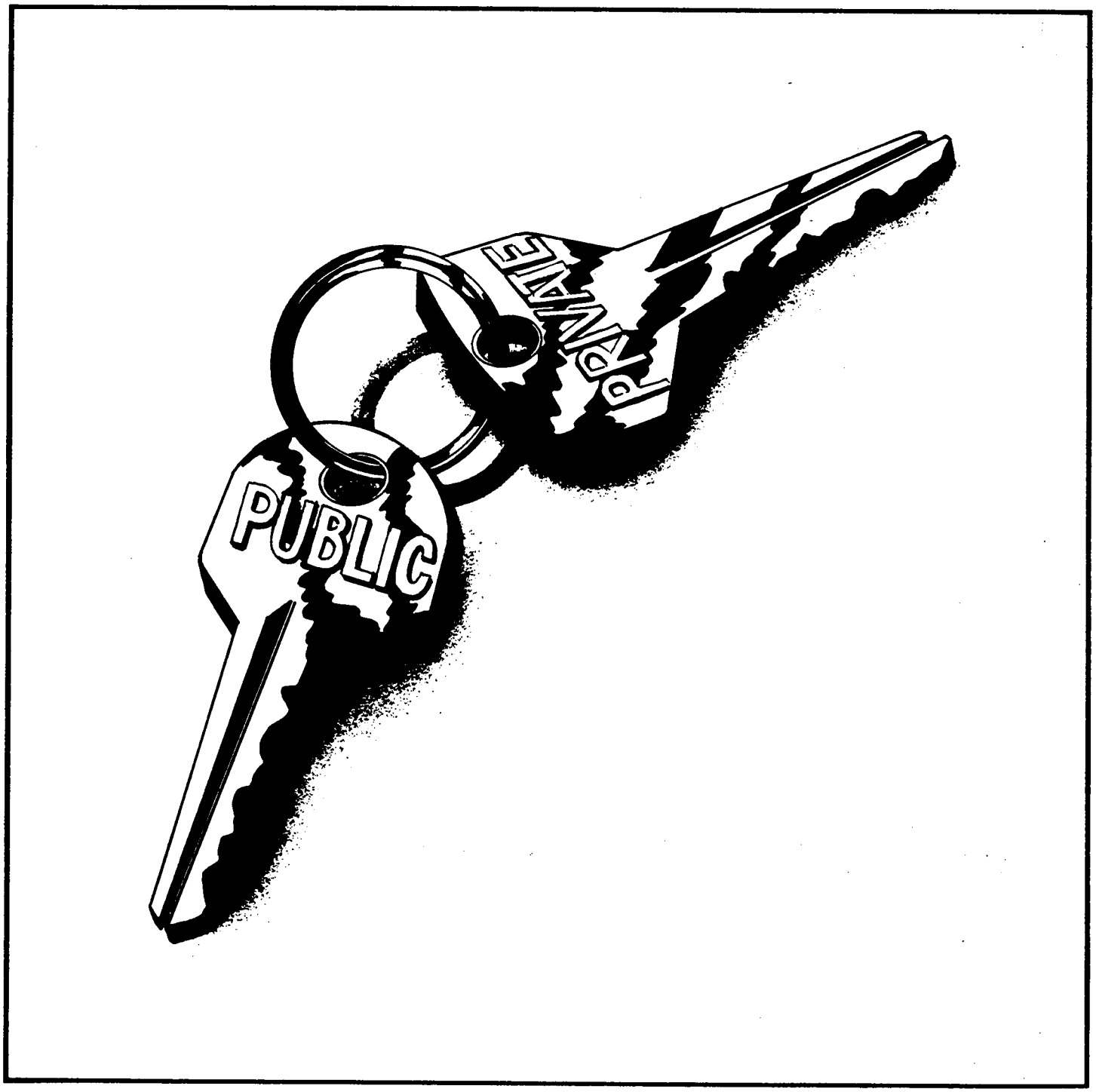
U.S. Department of Transportation

# Barriers to Private Sector Participation in Public Transportation

September 1986



NOTE: This report is an analysis of key issues associated with contracting for public transportation services. Part of its content includes conclusions which are specific to one jurisdiction, and recommendations based on this group's perceptions of the issues involved. Recognizing that local conditions may vary, and that there may be many alternative approaches to resolving transportation problems, these positions may not necessarily reflect those of the U.S. Government. As such, no endorsement of these positions is either expressed or implied by the U.S. Department of Transportation.

# Barriers to Private Sector Participation in Public Transportation

Final Report
September 1986

Prepared by
Theodore A. Thompson, with assistance from
Thomas J. Cullinan, Dennis Kulkis, and
Robert Knighton
Transit Program and Evaluation Bureau
New York State Department of Transportation
State Campus
Albany, New York 12232

Prepared for
Office of Planning
Urban Mass Transportation Administration
U.S. Department of Transportation
Washington, D.C. 20590

Distributed in Cooperation with
Technology Sharing Program
Office of the Secretary of Transportation

DOT-I-86-34

## ACKNOWLEDGEMENTS

Thanks and recognition of assistance are due many individuals for their contributions to this report. Though too numerous to mention by name, this group includes the staffs of numerous NYSDOT bureaus, public and private operators and government administrators in Onondaga, Suffolk, and Westchester Counties, and UMTA staff, particularly Paul Verchinski.

A special thanks to Janine Krylowicz, Christine Hubicki, and Janet Alex for their efficient, professional preparation of numerous drafts.

Any errors are solely the responsibility of the undersigned.

Thoedore A. Thompson
Albany, New York

## PREFACE

New York has provided, through its transit capital and operating assistance programs, an economic environment more supportive of private sector providers of public transportation than most other states. Such support varies across New York due to differences in both perceived needs for public transportation and local perceptions of the appropriate role for the private sector. The unique contribution of this study to the current debate over public vs. private service providers is an analysis of how three New York counties with significant public transportation usage have developed their current apportionment in service provision between the two sectors.

Study findings with utility outside New York include the following:

- Crucial to the continued provision of public transportation services with inadequate farebox revenue by private operators is administrative and economic support from both state and local governments. The case studies described here indicate that support from county governments in particular is important for continued provision of public transportation by private operators.

- Of the three New York counties studied, two have institutional arrangements likely to be replicated in many other U. S. counties:

  i) A strong public sector regional transportation authority providing most of the local service with numerous small private firms providing a variety of low volume, high mileage services.

  ii) A number of small to medium sized school bus and commuter bus firms willing to operate some subsidized transit service.

  The third county is unique in New York and possibly in the U. S. in that one private operator under contract to the county provides 85% of the revenue vehicle-miles and carries over 96% of the passengers.

- Events occurring during the course of the study demonstrate the continued need for a state regulatory agency to control intrastate operating franchises even where a local government guarantees the financial viability of services. At the very least, the state agency can serve to insulate the choice of the appropriate operator for a particular service from undue influence by local politics.

- Monopoly service provision by private operator has been shown to be only slightly more economical and efficient than monopoly provision by public operator. However, when an operator can be replaced by another operator at the expiration of a purchase of service contract, the prospect of loss of contract is an effective cost restraint.

- In order for regional transportation authorities to fully utilize competition to restrain growth in costs, they need to begin operating more as transportation brokers supporting and monitoring the provision of service by private and public contractors than be sole providers themselves.

- New York's mortgage recording taxes collected on new mortgages at the county level are a useful revenue source for transit subsidies and have potential for increased utility if current collection stipulations are relaxed.

- 13(c) has not so far acted to inhibit the provision of service by private operators in New York. The potential for labor difficulties based on contract violations and New York's Civil Service Law is a barrier to private sector participation, however.

- Based on available figures, only one small public operation in New York has the potential for more economical operation if Federal aid is terminated and the system reverts to private operation under contract. Still unknown are the bid prices that would be received for local service currently provided by public operators if such bids were solicited from the large national firms currently bidding on local contracts.

TABLE OF CONTENTS


| | Page |
|---|---|
| ACKNOWLEDGEMENTS | i |
| PREFACE | ii |
| TABLE OF CONTENTS | iv |
| TABLE OF TABLES | vi |
| EXECUTIVE SUMMARY | vii |
| VOLUME I | |
| CHAPTER ONE: ROLES OF PRIVATE OPERATORS IN PUBLIC TRANSPORTATION | |
| Preface | 1 |
| I. Introduction | 2 |
| II. Assessment of the Private Sector Roles in Basic Mobility Transit Services | 3 |
| A. Local Transit | 3 |
| B. Specialized Transit | 5 |
| C. Transportation Brokerage | 7 |
| III. Assessment of Private Sector Roles in Potentially Self-Sufficient Services | 7 |
| A. Commuter Express Busing | 8 |
| B. Subscription Busing | 9 |
| C. Vanpools | 11 |
| D. Taxi Services | 12 |
| E. Airport Ground Transportation Service | 13 |
| IV. Assessment of Private Sector Roles in Other Areas of Public Transportation | 15 |
| A. Equipment Purchasing, Leasing and Rehabilitation | 15 |
| B. Maintenance Facilities and Maintenance Contracts | 16 |
| C. Transit Management by Contract | 18 |
| V. Summary | 19 |
| Footnotes | 22 |

Page

CHAPTER TWO: EVALUATION OF BARRIERS


I. Introduction . . . . . 25

II. Review of Federal Barriers . . . . . 25
A. Statutory Provision for the Private Sector . . . . . 25
B. Barriers to Private Sector Participation . . . . . 26
1. Section 13(c)--Labor Protections . . . . . 26
2. Section 8(b)(1)--MPO Planning Process . . . . . 29
3. Other Federal Regulations . . . . . 30

III. Review of State Barriers . . . . . 31
A. Maintenance of Service Through Provision of Subsidy and Regulation of Fares and Profits . . . . . 31
B. State Regulation of Entry and Exit . . . . . 34
C. State Safety Regulations . . . . . 35

IV. Review of Local Barriers . . . . . 36
A. Local Regulations as Barriers . . . . . 36
B. Other Local Barriers . . . . . 37


CHAPTER THREE: SUMMARY OF NEW YORK CASE STUDIES


I. Introduction . . . . . 39

II. Case Study Analytical Methodology . . . . . 40

III. Cast Study Findings . . . . . 40
A. Onondaga . . . . . 40
B. Suffolk . . . . . 42
C. Westchester . . . . . 45

IV. General Findings/Recommendations . . . . . 46

Footnotes . . . . . 48


VOLUME II


Appendix A--Onondaga Case Study . . . . . A-1

Appendix B--Suffolk Case Study . . . . . B-1

Appendix C--Westchester Case Study . . . . . C-1

Appendix D--Suffolk Contract . . . . . D-1

Appendix E--Westchester Contract . . . . . E-1

## TABLE OF TABLES


| Table Number | Title | Page |
|---|---|---|
| A-1 | Current Private Participation in Line Service in Central New York | A-6 |
| A-2 | Role of Federal and State Aid in Operating Budgets of Central New York | A-8 |
| A-3 | Measures of Economy and Effectiveness Among Central New York Public and Private Operators | A-12 |
| B-1 | Suffolk County Transit System Distribution of Passengers and Vehicle Miles Among Three Categories of Subsidized Operators | B-4 |
| B-2 | Financial Comparison--Suffolk's Public and Private Operators - 1985 | B-7 |
| B-3 | Performance Comparison--Suffolk's Private and Public Systems | B-11 |
| C-1 | Total Westchester System--Long-Term Trend | C-8 |
| C-2 | Peer Comparison--Large Suburban Systems | C-10 |
| C-3 | Westchester County Bus Fleet Make-Up | C-11 |
| C-4 | Comparative Financial Information CFY 1983-1986--Westchester County | C-15 |

# EXECUTIVE SUMMARY

## Study Format

This study of the barriers to private sector involvement in public transportation has three parts. Chapter One considers the full range of public transportation services the private sector could provide looking at current U. S. examples. Chapter Two describes the federal, state, and local barriers currently limiting private sector provision of these services. Chapter Three summarizes the unique contribution of this study: an analysis of three New York counties utilizing private operators to provide varying percentages of public transportation under different institutional structures. The full case studies of the three New York counties - Onondaga (Syracuse), Suffolk (eastern Long Island), and Westchester (New York City suburb) - are presented in Appendices A-C. Appendices D and E exemplify purchase of service contracts currently in use in New York.

## Public Transportation Services-Potential For Private Provision

A useful way of categorizing public transportation services is a three part division: basic mobility, potentially non-subsidized, and miscellaneous. Across the U. S. basic mobility services are seldom unsubsidized. This category includes local transit, specialized transit (more commonly known as elderly and handicapped (E&H) transportation), and transit brokerage. Local transit, particularly in high volume urban U. S. corridors, is usually provided by public operators. Most current analyses reject a wholesale reversion to private provision. However, private provision of specialized transit and the utilization of private operators in transit brokerage is feasible in many urban areas provided local governments or local transportation authorities recognize the economies and efficiencies potentially available from the private sector.

Potentially non-subsidized services include commuter express bus, subscription service, vanpools, taxis, and airport ground transportation. Private operators are interested in these services since profits are possible. However, many of the markets for these services are close to saturation.

The miscellaneous category includes equipment purchasing, leasing, and rehabilitation; maintenance by contract and in joint facilities; and management services by contract. The analytical emphasis of this study, however, is on public transportation passenger services as opposed to miscellaneous functions admittedly due to New York having greater potential for more private provision of the former than the latter.

Putting the above discussion in tabular form produces the following.

## Potential for Expansion of Private Sector Participation

| Function | Potential |
|---|---|
| **Basic Mobility Services** | |
| Local Transit | Limited, with subsidy |
| Specialized Transit | Good, with subsidy |
| Transit Brokerage | Good, if attitudes change |

Potentially Non-subsidized Services

| | |
|---|---|
| Commuter Express Bus | Good |
| Subscription Bus | Limited to large worksites |
| Vanpools | Good |
| Taxis | Good, if attitudes change |
| Airport Ground Transportation | Limited, market close to saturation |

Miscellaneous

| | |
|---|---|
| Equipment Purchasing, Leasing and Rehabilitation | Limited, market close to saturation |
| Maintenance Contracts and Joint Facilities | Limited |
| Transit Management by Contract | Limited by lack of interest |

Barriers to Private Sector Roles

For expansion of the private sector in the eleven public transportation services noted above to occur requires the reduction of existing barriers. Chapter 2 describes the most important federal, state, and local barriers. The ten most significant barriers with proposed means of reduction are described below. Where there is justification for maintaining particular barriers, this is stated.

1. Lack of Involvement in the Planning Process

UMTA planning regulations, until recently, did not require the participation of private operators in any significant way. Consequently, private operators in many U. S. urban areas were excluded from service planning and provision especially for local transit, specialized transit, and taxi services.

Potential Means of Barrier Reduction

UMTA's 1984 policy statement on Private Enterprise Participation establishes the framework for a more inclusive local planning process. The Guidance on Documentation of Private Enterprise Participation in Urban Mass Transportation Programs of January 24, 1986, details the expected levels of private operator participation in the MPO planning process for UMTA to approve future capital and operating assistance grants for designated recipients. While UMTA refines this Notice of Guidance based on comments solicited from interested parties, MPOs responsible for submitting Transportation Improvement Programs and Section 3 and 9 applications are complying in numerous ways dependent in part on the political skills of local private operators. Given that the annual transportation planning process often involves numerous tedious meetings, it will be interesting to track the desire for continued involvement by private operators over the coming years.

2. Section 13(c) Labor Protections

The purpose of Section 13(c) of the UMT Act was to protect the jobs, benefits and rights of employees of private transportation companies from adverse effects of Federal funds. Ambiguous language and the uncertainty over the division between management and labor's responsibilities have resulted in 13(c) agreements extending beyond employee protection into policy areas which are normally management

prerogatives. As long as public transportation service was expanding in the 1970's, 13(c) was seldom a concern to the predominantly public sector driver unions. Now that service cutbacks are under consideration in an era of subsidy freezes and reductions in service, efforts to contract service to private operators can be expected to generate 13(c) opposition from affected unions. Additional uncertainty attaches to the application of 13(c) to employees of private operators already under contract.

Potential Means of Barrier Reduction

Guidelines are needed to clarify time limitations to 13(c) proceedings, definitions of fairness and equity, and protection of contractors' employees. Such guidelines should be written jointly by transit management and labor and enforced by UMTA, not the Department of Labor. Additionally, transit management should not execute 13(c) agreements which prohibit contracting for services. UMTA has documented its opposition to such agreements. Finally, transit managements need to assure unions that reductions in force due to contracting with private operators will be handled only by normal attrition or strict adherence to 13(c) provisions. While some labor agreements have been so negotiated, union opposition makes these provisions difficult to achieve.

3. Attitude of Local Government and Transit Officials

Local government and/or transit officials in U. S. urbanized areas tend to avoid private operators as suppliers of needed transportation services. Private sector profit is considered to be an extra cost which can be saved by provision of service on a non-profit public sector basis. This attitude ignores the frequently lower costs of private provision of service. Additionally, local government officials may prefer transit system operation by public authority because it insulates these officials from the complaints of the general public which they would receive directly in a privately contracted operation.

Potential Means of Barrier Reduction

UMTA's "Guidance..." of January 24, 1986, should effectively direct the attention of local government and transit officials to the potential economies of private sector provision of public transportation. Additionally, New York's private operators can document their superior economy and efficiency to local government and transit officials through distribution of NYSDOT's periodic transit performance evaluations. Finally, private operators nationwide need to utilize their industry associations to promote their interests more aggressively at local and state levels.

4. State Entry, Exit and Tariff Regulations

The application of state entry, exit, and tariff regulations to all private operators who provide statewide, multi-county, or intracounty service requires those municipalities which contract with private operators for local service to follow state regulatory procedures before operators, routes, or fares can be changed. These service characteristics may be decided locally when service is provided by a public authority or a municipally operated system. Fairness would suggest that when privately contracted services are guaranteed against financial loss by local governments, that these municipalities have the right to select operators and set tariffs.

Potential Means of Barrier Reduction

For this objective to be fully realized in New York requires legislation giving municipalities purchasing public transportation services from private operators the same regulatory authority regarding entry, exit, and tariffs as public transportation authorities and municipal operations. There is essentially no support for such a change among municipalities so contracting for at least two reasons:

a. NYSDOT's Regulation Division often serves as a useful restraint on local political pressures unjustifiably favoring a particular operator.

b. NYSDOT's Regulation Division in recent years has seldom contravened local choices of contract operators where the municipalities guaranteed coverage of the contract costs. Alternatively, Wendell Cox has suggested that municipalities buy the operating rights relevant to their areas from existing operators and hold these rights for the contractors performing the services. While initially appealing, adjudication of the value of the operating rights to be secured could be a lengthy procedure.

5. Insurance and Safety Regulations

Public transportation operators in New York must regularly comply with liability insurance, vehicle inspection, and driver certification requirements. This means expenditures for vehicle maintenance, medical examinations, obtaining records from the Department of Motor Vehicles, insurance premiums, and administrative time for record keeping. New York is currently making driver certification requirements more stringent and insurance premiums have increased sharply. Some public operators are exempt from insurance and vehicle inspection requirements.

Potential Means of Barrier Reduction

These regulations are intended to protect the public so that only some procedural modifications are suggested here. Vehicle inspection requirements for out-of-state operators visiting New York for the first time can be onerous when inspectors are hard to locate. Additional inspectors are needed in some parts of the state. Further, NYSDOT needs to monitor insurance costs and the effects of more stringent driver requirements.

6. State Legislation Mandating Public Authority Institutional Structure

New York State laws mandate participation of particular counties in public transportation authorities and permit the participation of other counties. All member counties must contribute a mortgage recording tax to support authority operation.

All New York State transportation authorities have operating subsidiaries. As a result, most authorities give minimal consideration to provision of service by contract with private operators.

Potential Means of Barrier Reduction

The UMTA privatization policy is relevant as a remedy to the lack of attention paid private operators by public authorities. For counties which are optional members of authorities, membership can be withdrawn in the same way it was initi-

ated: by an act of the county legislature. For counties that are mandated members of public authorities, however, an act of the state legislature is needed to terminate membership. In either case, membership termination with retention of the mortgage recording tax would increase local flexibility in selecting operators.

7. Administrative Requirements of Compliance with State and Federal Regulations

Acceptance of state and federal capital and operating subsidies requires compliance with numerous regulations deemed socially or economically beneficial. For small private operators, compliance can be a burden for commensurately small administrative staffs if indeed compliance is even feasible. Typically, federal requirements include Section 15, Section 18, and Section 16(b)(2) application and reporting requirements.

Potential Means of Barrier Reduction

At the three New York study sites, county administrative staffs are either totally responsible for or assist the private operators in meeting state and federal requirements. This practice is worth replication. UMTA's increased use of one-time submissions and certifications has eased the Federal grants process, but Federal and State regulations need continuous monitoring both for ease of compliance and effectiveness in meeting original objectives. Associations of public and private operators are appropriate monitoring institutions.

8. Restrictive Local Ordinances

Most cities have transportation ordinances which limit entry to and may limit the utility of public transportation modes, particularly paratransit. Typical ordinances require all taxis to have a medallion with a limit on the total number, prohibit shared riding of taxis by separate parties, and mandate distance-based fares as recorded by taximeters. Municipal governments justify such ordinances as defending the public from dishonest taxi operators and undesirable fellow passengers. Additionally, distance-based fares and prohibitions on shared-riding put taxi use beyond the means of many transportation disabled, thus limiting the market.

Potential Means of Barrier Reduction

Given the volatile reaction usually generated by proposals for changes in taxi ordinances and the lack of a well-defined constituency in most cities supportive of shared-riding, zone fares and free-entry, prospects for change are poor at best. Taxi industry organizations could publicize the successful use of this mode to meet particular public transportation needs in Phoenix and Syracuse, and the effectiveness of the Washington, D.C., system which operates with minimal local regulation.

9. Lack of Private Operators

Not all urbanized areas have local private operators offering a full range of public transportation services. In such areas, the alternatives appear to be provision by public operators or no services. This is not a barrier to specific operators but forecloses private provision of service.

Potential Means of Barrier Reduction

Through the UMTA privatization policy and other industry developments, this barrier is being lowered, though not for a full range of services in every location. Numerous private firms are soliciting business outside their normal service areas, sometimes nationally. In New York State, for example, Blue Bird Coach Lines of Olean is actively soliciting contracted service from the upstate public authorities. Nationally, the Hudson General Corporation, Greyhound, Trailways, and the Dave Corporation, to name only a few, are interested in new service opportunities. Additionally, state and local governments should establish and publicize market conditions such that private operators could meet public transportation needs and make a profit. Sufficient private operators can be expected to enter the markets so established.

10. Contracts that are Negotiated, not Bid

In New York, local governments contracting for public transportation service frequently consider only the operator with the current operating authority for the route to provide the service. Consequently, a contract is negotiated with that operator when a bid process might identify either a lower cost carrier or a lower cost mode of meeting that transportation need.

Additionally, continuing to negotiate contracts with the same operator for a number of years tends to produce complacency. Periodic solicitation of bids from other operators might produce better or less costly service. In contrast to #9 above, this is not a barrier to privatization but a barrier to some private operators, preventing them from participating in a particular public transportation system.

Potential Means of Barrier Reduction

UMTA is currently re-orienting its privatization efforts to an emphasis on competitive bidding. While London Regional Transport has inaugurated competitive "tendering", it is difficult to find a U. S. system following this lead. New York has essentially exempted public transportation contracts from minimum bid requirements. However, a combination of fiscal constraints, the UMTA block grant proposal if passed, and a realization of how competition can produce efficient, economical public transportation may lead more local governments to consider bidding for service providers.

Onondaga Findings

1. Onondaga's public transportation institutional history records more than a decade of competition between public and private operators over legitimate operating authority. However, in the 1980's, the regional transportation authority has cooperated with the private sector in the following ways:

    a. Joint occupancy of a central maintenance facility with a private bus firm.
    b. Contracts with taxis for overflow elderly and handicapped service in Onondaga County.
    c. Contracts with taxi and non-profit carriers for elderly and handicapped service in rural counties.

d. Joint provision of park and ride express service during highway reconstruction in 1984.

The regional transportation authority is exploring other ways of working with private operators in response to UMTA initiatives and union contract demands, but also continues to aggressively compete with these operators for the profitable charter and contract service markets.

2. Opportunities for expansion of private operator provision of the following services exist:

   a. Local service in low demand periods and places
   b. Elderly and handicapped service
   c. Commuter express service
   d. Airport service
   e. Taxi service
   f. Vanpools

   Sufficient private operators are interested in Onondaga to pursue these opportunities. The establishment of appropriate subsidies or profit incentives is more problematic, however.

3. State legislation permitting termination of membership in regional transportation authorities while allowing the continued use of mortgage recording tax revenues would give New York counties greater freedom for providing needed services by contract with local private operators.

Suffolk Findings

1. Suffolk's system of contracted private operators has achieved the ridership, service expansion, and farebox recovery goals set in 1980 with minimal governmental supervision. A major contributing factor to this early achievement of goals has been cooperation from the operators.

2. However, as the system matures, it is expected that additional controls will be required over cash handling, vehicle maintenance, and service quality. Thus, some increase in county administrative staff can be expected.

3. One means of maintaining the current efficient and economic performance of Suffolk County Operations would be the periodic rebidding or renegotiating of services among appropriate operators, perhaps on a three or five year basis.

4. Additionally, maintenance of efficiency and economy could be encouraged through a system of monetary incentives for superior performance on specific service measures. However, such an incentive system would require additional administrative structure.

5. If the public sector system in Huntington was replaced by a private sector operation with a cost structure similar to the rest of Suffolk's operators, sufficient money could be saved to easily offset any loss of federal operating and even capital assistance if such funds were held up by 13(c) objections. There is currently no political support in Huntington for such a conversion, however, in spite of the high local subsidy required.

6. Suffolk's expanding employment opportunities appear to offer significant opportunity for expansion of the vanpool mode. Successful vanpools can lead to express busing. However, significant promotional effort by an existing non-profit ride sharing agency among Suffolk's major employers is necessary both for assistance in forming viable pools and in securing seed money for vehicles and program administration.

7. The greater the proportion of Suffolk's system that is brought under the Suffolk County Operations contracted arrangement, the greater flexibility the county will have in selecting the most efficient and economical operators. However, greater local subsidy is needed for these routes compared with those services supported solely by State operating assistance.

Westchester Findings

1. Westchester had the historical advantage of analyzing its public transportation financial needs after State and Federal operating subsidies had become available. It also had preserved its 17 private operators through capital assistance in the early '70's.

2. The county never really developed attitudinal opposition to private sector operation, as it recognized private operator efficiencies and linked existing services into a local system. Profit was accepted as a legitimate cost of doing business.

3. The independent operators became a system when a uniform fare structure and a transfer policy was adopted, when individual towns could no longer restrict through routes, and when the county developed a coordinated route structure.

4. While most service and fare decisions are made by the county, Westchester provides for private operator input to the system's financial and operational decisions through Administrative Policy Committees.

5. Most of the transit vehicles in the system have been publicly provided, but the garages have remained in private control as the county has decided to pursue capital grants for vehicles only and meet garage costs through operating assistance.

6. Given the above capital financing and the multitude of functions now provided by the county--planning, marketing, grants application, etc.--it can be concluded that Westchester's private operators have very little capital investment at risk and have evolved into private sector management firms. This has produced a decrease in operators' efficiencies and an increase in subsidy requirements.

7. Additionally, one firm has become a near-monopoly provider similar to the public monopolies held by regional authorities and equally in need of a more competitive environment. Two means of achieving greater competition would be:

   a. greater support of small bus firms by the county in its letting of contracts; and
   b. vigorous application of its competitive bidding policy by UMTA.

General Findings

1. Onondaga and Suffolk Counties provide more relevant institutional models for emulation by other regions in New York and nationally because their mix of public and private operations is more typical than Westchester's. Onondaga has a dynamic regional authority and a number of private firms providing a broad range of services. Suffolk has a large number of small to medium-sized school contractors whose existing operations facilitate the provision of a limited amount of transit service by each. One of these institutional environments is more likely to be replicable in other parts of the U. S. than Westchester's situation where a single private firm now provides over 80% of the revenue service and carries over 95% of the passengers.

2. A crucial element in the survival of private operators in these counties has been a supportive role taken by the respective county governments. The three counties studied have all taken significant legislative and administrative steps in support of private operators in contrast to a number of New York counties where private operator interests are essentially ignored. Another vital element in the survival of private operators who operate franchised service not under purchase of service contracts is the availability of State operating assistance.

3. Given 2 above, the argument could be made that if counties guarantee the economic viability of local public transportation services, they should also be allowed to determine the fitness of local bus operators for serving the public and thus their right to hold a franchise for a service. On the other hand, the current arrangement in Suffolk and Westchester in which the decision as to which operator will hold the contract for a subsidized service is made locally while fitness for service is determined by state agencies strikes a viable balance between local control and undue influence of local politics.

4. Monopoly private operators in Westchester and New York City on the one hand and the Suffolk system on the other illustrate the thesis that it is not privatization itself so much as competitive provision of service that produces the best performance on economy and efficiency measures. If there is no competition for service provision, the cost structure of the monopolistic private operator tends to rise to that of the nearest monopolistic public operator, particularly if the same union represents both shops. This tendency for cost structures between nearby public and private operators to level upwards is reinforced to the extent that capital equipment is publicly provided. Where a private operator's capital is publicly provided, the entrepreneurial risk is diminished, thereby reducing the incentive for cost control. Where capital equipment is publicly provided and revenues for contracted service are guaranteed by local governments, private operators thus engaged are little more than management firms with minimal incentive for cost control.

5. If competition is to be reintroduced to the provision of public transportation service, a prerequisite is for existing public transportation authorities to consider themselves as much transportation brokers as transportation providers. Only as transportation authorities are willing to consider service proposals from both public and private operators on a periodically

renewable basis will continuing efforts at cost control be made by competing firms. Two cautionary notes are necessary here. Transportation authorities acting as brokers need to evaluate the fully allocated costs of public and private operators as equitably as possible. Unfortunately, there does not currently exist a readily applicable evaluation methodology. Second, the service specifications for which a transportation authority solicits bids should include quality standards and penalties for non-compliance including contract termination.

6. New York's mortgage recording taxes are proving to be a useful revenue source for New York's transportation authorities. Based on new mortgages in the counties where this tax is in effect, this is a potentially useful revenue source for transit purposes for counties throughout New York and other states as well.

7. UMTA Section 13(c) labor protection provisions have not so far acted as a barrier to private operator participation in public transportation in New York. Of greater concern is a part of New York's Civil Service Regulations, entitled the Taylor Law, which protects the "scope" of public sector bargaining units. To date, the application of the Taylor Law to public transportation privatization efforts has not been litigated.

8. Among the New York case studies evaluated here, only the small HART system in northwest Suffolk County would on paper show a clearly positive financial change if Federal operating assistance was terminated and the system put under private operation as in the rest of Suffolk County. This conclusion is based on the observation that HART's driver wages are currently approximately twice those prevailing among operators in the rest of the county. In central New York, CNYRTA's operating costs do not so clearly exceed those of local private operators that privatization by itself could make up for a termination of Federal operating assistance. What is not known is the bid prices CNYRTA would receive if it solicited proposals for service provision from some of the national firms now interested in contracting local service. Westchester and Suffolk utilize Federal aid to meet their privately contracted system operating expenses and would be as affected by cutbacks as public sector systems and, as such, would also be forced to cut services or raise fares.

Proposals for Future Research

1. Develop model legal documents useful in contracting with private operators for public transportation service as follows:

   a. requests for proposals to provide particular services;
   b. purchase of service contracts which promote economy, efficiency, and effectiveness through profits and/or incentives;
   c. contract monitoring procedures such that quality service is provided while keeping contract administration costs to a minimum.

   Such documents should be developed for contracts involving two alternatives: capital equipment and facilities provided by the private operator and by the government agency needing the service.

2. Explore whether monetary incentives to the achievement of specific performance measures is the most effective way of producing quality service or whether the periodic re-bidding of services on a three to five year cycle is sufficient incentive. A related concern is the prudent amount of financial and operational auditing associated with the respective procedures.

3. What are the most effective steps a state transportation department can take to control insurance premiums for private sector operators in the immediate future? Should state transportation departments begin administering self-insured risk pools since private insurance carriers are either raising rates precipitously or abandoning the field completely?

4. Development of fully-allocated cost procedures by which to create a "level playing field" for comparing service proposals of public and private operators.

5. Demonstration projects with follow up focusing on transit systems that did secure services through competitive bidding and the consequences:

   a. Administration costs for service monitoring
   b. Labor issues
   c. Quality of service
   d. Cost changes
   e. Source of capital equipment

## CHAPTER ONE -- CURRENT ROLES OF PRIVATE OPERATORS IN PUBLIC TRANSPORTATION

### PREFACE

The purpose of this study is to examine past, current, and potential roles of private enterprise in public transportation; to identify the barriers inhibiting full participation of the private sector; and to propose means of reducing these barriers. The barriers assessed include regulatory, institutional, legislative, economic, attitudinal, and geographic considerations. New York transit systems in Onondaga (Syracuse), Suffolk (including the Town of Huntington), and Westchester counties are the foci of the field investigations. The first chapter surveys the roles which the private sector has played and/or has the potential to fulfill. The second chapter reviews federal, state, and local barriers applicable to private sector participation in public transportation; assesses the impacts of these barriers; and suggests means of barrier reduction. The third chapter describes the analytical methodology used in the case studies, summarizes the results of these studies, and proposes local policy initiatives, some site specific and some generic. The case studies of Onondaga, Suffolk, and Westchester counties are in Appendices A-C, with illustrative contractual material in Appendices D and E.

This study focuses on the provision of public transportation service by private operators. Other aspects of private involvement such as equipment purchasing and leasing, maintenance contracts, and contract management are discussed only briefly, largely due to the infrequent occurrence of such arrangements in New York.

The study utilizes the perspectives of representatives from local governments, transit companies, regional authorities, organized transit labor, and the New York State Department of Transportation (NYSDOT). These representatives have provided perceptions on facets of privatization and critiques of study segments relevant to their expertise.

There are essentially two methods of achieving economies in mass transportation: effective management and efficient delivery mechanisms. Effective management means exercising control over the variables within management's jurisdiction such as size of work force, work assignments, work rules, maintenance procedures, and operating performance standards. Effective management can achieve economies up to limits set by service levels, fare structures, and subsidies. Such policy decisions are generally the responsibility of a board of directors and, thus, outside managerial control.

The second method of achieving economies is efficient service delivery mechanisms. This study postulates that private transportation firms have the potential to be more efficient than public transit operators in providing service, managing services, and maintaining equipment. The study, therefore, examines the cost economies available to the transit industry through a greater utilization of the private sector.

The postulate that private transportation firms can operate more efficiently than public sector transportation systems has been documented both in New York and nationally. NYSDOT's performance and budget reviews of the State's transit

systems clearly indicate the lower costs per service unit of most private operators compared with public sector peers. Nationally, several studies (Morlok, Cox) document comparative operating costs and conclude that the use of private operators will generate cost economies in the provision of transit services. This study assesses how private companies operate more efficiently and under what circumstances they generate cost economies.

The advantages of New York as a laboratory for the study of private sector involvement include the following. Major private operators throughout the State provide local, express, specialized, intercity, and other types of public transportation often along side public systems. In 1984, approximately one hundred private operators in New York produced over 80 million revenue vehicle miles and carried over 138 million passengers. New York is the leader in the utilization of private operators, while also providing the most public transit service in the nation, primarily through the New York City region's Metropolitan Transportation Authority. The State has an extensive operating assistance program, making aid available to public and private operators alike. Capital assistance for the full local share of federal projects is also made available to public and private operators. The state and local governments are committed to transit, yet are keenly aware of the need to control deficit based financing.

## I. INTRODUCTION

The private sector's role in the mass transportation industry has taken many forms during the last fifty years. Numerous studies have documented this role, obviating the need to do so here. (1) Significant influences on the cyclical fortunes of the private sector public transportation industry were the explosive growth of highways and suburbs in the 1950's and 1960's and the adoption of the 1964 and 1974 Urban Mass Transportation Acts, as amended. The former drastically altered the landscape and the trip patterns of the riding public; the latter modified the institutional structures and delivery mechanisms of the transit industry.

The geography of established urban areas constrains the roles mass transit can play in the development of a region, yet opportunities for transit related growth abound in emerging southern and western cities. Opportunities for institutional change in public transportation are also available both in established and emerging urban areas. The conventional wisdom of the 1970's and early 1980's that urban transit is the sole province of a monopolistic public sector is being seriously challenged. Today's policy makers must deal with transit's increasing deficits at a time when the growth of public funds has slowed and the demands on those funds increased. The transit industry must, therefore, develop institutional arrangements than can achieve greater economies while continuing to produce efficient and effective transit services.

The first chapter examines the roles the private sector is performing, or has the capacity to perform, in public transportation and identifies barriers to these roles. Although in many areas private participation in mass transportation has been reduced to insignificant levels, the private sector has retained certain roles and emerged from the 1970's with new roles. The retained roles are local transit service (now generally subsidized), intercity operations, and local taxi operations. Some of the new roles are express and subscription bus service; specialized transit such as vanpools, paratransit, and demand-responsive systems; and support functions such as contract management and equipment maintenance, financing, and leasing.

The role assessments are separated by service and financial considerations into three categories as follows:

| Basic Mobility Services--Subsidized | Potentially Self-Sufficient Services | Miscellaneous Functions |
|---|---|---|
| Local Transit | Commuter Express Bus<br>Subscription Bus<br>Vanpool<br>Taxis | Equip. Purchasing & Leasing |
| Specialized Transit | Airport Ground Transportation | Maintenance Contracts & Joint Facilities |
| Transportation Brokerage of Basic Services | | Contract Management |

The examination of the private sector's involvement in these roles is presented through New York and national examples, the strengths and weaknesses of private involvement, and a review of the significant barriers. The chapter concludes with a summary of the roles which have the greatest potential for cost economies through further involvement of the private sector.

## II. ASSESSMENT OF THE PRIVATE SECTOR ROLES IN BASIC MOBILITY TRANSIT SERVICES

In this section, the roles that the private sector plays in providing basic mobility services are assessed. Basic mobility is the essential transportation service provided by a community such as local transit and specialized transit for the elderly and handicapped. Transportation brokerage as an institutional procedure with a unique potential for providing these services is also discussed.

### A. Local Transit

The use of private bus operators for providing local transit service, a practice which declined sharply from 1965 to 1975, has stabilized and even started to increase where policy makers have recognized the advantages in contracting with private operators over the establishment of a public authority or municipal operation.

#### Examples

Ten private bus companies provide local and express service within New York City (NYC) under franchise from the City. These franchises, which provide the companies with operating rights for certain routes in return for a fee, originated with private street railway companies. In 1985, NYC private operators produced over 34 million vehicle miles while carrying over 90 million passengers. These operators have maintained a revenue/cost ratio of approximately 70%. State, local, and federal operating assistance covers the remaining deficit and provides for a

reasonable profit. The operators determine their own service levels. Fares are set by NYC which has adopted a policy equating franchised private bus fares with those of the Metropolitan Transportation Authority (MTA).

Westchester County, a NYC suburb, relies exclusively on 11 private operators to provide local transit service. The County's Department of Transportation oversees the system and administers the service contracts. The contracts specify routes and service levels and guarantee a profit based upon negotiated expense levels. The 1984 agreement provides a fixed management fee for the private operator rather than a percentage of expenses as the return. An example of a Westchester County contract is provided in Appendix E. In 1985, the Westchester County Transit System carried over 29 million passengers and produced about 9.5 million revenue vehicle miles. The system had a revenue/cost ratio of 58% including administrative costs. The Westchester system is examined in detail in Appendix C.

Transit service in Long Island's Suffolk County is also primarily provided by private operators through purchase of service agreements with the County. The County administers such system functions as routes, schedules, fares, vehicle acquisition, and government grant applications. In 1985, the system carried over 5 million passengers and provided over 6 million miles of service. An exception to provision of service by the private sector in Suffolk is the Town of Huntington, which opted for a public sector municipal system after an initial unsatisfactory experience with a local private operator. This is developed further in Appendix B.

The opportunity for urban areas currently served by public operators to provide local transit service using private operators has been increased by the introduction of the "opt-out" concept in some states. Johnson County in Kansas, San Diego, and Minneapolis, St. Paul have all utilized this procedure in varying degrees. Looking at Minneapolis, St. Paul, the Twin Cities Metropolitan Transit Commission collects property taxes from a seven county taxing district to subsidize regional bus operations. Communities within the district which receive little or no MTC service can opt-out of the MTC and may use up to 90% of their tax levy to subsidize local replacement service. In all known cases, however, special state legislation is required to implement the "opt-out" concept.

Strengths and Weaknesses

The strengths and weaknesses of private sector involvement in local transit are illustrated by the following. The private bus companies operating in New York City and the Westchester County Transit System exhibit two of the highest revenue/cost ratios (70% and 58%, respectively) of public transit systems in the United States. The Suffolk County System's cost per hour of operation is slightly over $26/hour, one of the lowest in the United States considering its peer group. San Diego has found that by contracting for suburban service with the private sector, its farebox recovery ratio improved from 11% to 26% for some service, while the subsidy required per passenger dropped from $4.50 to $1.69. (2)

On the other hand, the major Westchester County operator exceeded the cost per hour figure of its national peer group in 1983: $44.42 vs. $42.88. This is due in part to the lack of competition to the firm which provides over 80% of Westchester's service.

The "opt-out" concept has a potential negative perspective to it. If too many constituent municipalities or counties opt-out of regional transit authorities, the transit network could become fragmented to the point of inefficiency, leaving the remaining members with increased burdens of financial support. The Minneapolis, St. Paul experience will indicate the potential for fragmentation.

Barriers

Though the financial accounting of transit systems is not often disaggregated to an analysis of individual runs, public transportation authorities often provide local transit service in densely populated areas about as efficiently and economically as private operators. Thus, even privatization's staunchest advocates seldom prescribe wholesale conversion of local transit service. The lack of clear private sector economic advantage can, therefore, be a barrier.

Aside from this, the biggest barrier may well be attitude. Public officials are often suspicious of both the accountability and the profits of private operators; and, conversely, private operators are wary both of the complex procedural requirements associated with government subsidized services and the prospect of only limited profits.

Labor contracts and federal 13(c) labor protections are also perceived as barriers to privatization of local transit service.

B. Specialized Transit

UMTA regulations allow individual communities to decide how they will provide transportation for elderly and handicapped residents. A number of communities have opted for private provision to reap both service and financial advantages. UMTA's October, 1982, Paratransit Policy encourages private participation in such service.

Examples

Westchester County, consonant with its private operator policy, has met its specialized transit needs since 1975 with private, for profit operators. In 1978-79, it received its first lift-equipped transit buses. These vehicles were purchased by the County and leased for a nominal fee to the operators participating in the Westchester County System. The original intent was to equip the entire transit fleet with lifts. However, when utilization of these lifts proved minimal with many elderly and handicapped transportation needs still unmet, the County changed its policy to provide elderly and handicapped transportation entirely by private, for profit paratransit operators. Such service is provided 68 hours a week, shorter hours than the regular transit service. The service areas of regular and specialized transit are essentially identical in Westchester, but specialized transit fares are higher.

Suffolk County's history of specialized transit provision is analogous in part to Westchester's. Lift-equipped transit buses were purchased by the County and leased to the private operators participating in the system. At this point, the examples diverge as Suffolk has found this arrangement adequate for its specialized transportation needs. The Town of Huntington in Suffolk does not participate in this system, but rather has a publicly operated paratransit service operating two days/week.

Looking at national examples, in Milwaukee, transportation for the handicapped has been provided since 1978 by a user-side subsidy program. This program allows a user to purchase at reduced rates, or to receive free, a voucher to purchase services at discount prices from participating transportation providers. The provider redeems the vouchers from the subsidizing agency. This differs from provider-side subsidies in which payments are made directly to private operators to maintain certain specified fare and services levels. In addition to the user-side program, the Milwaukee County Transit System also operated lift-equipped buses. However, in 1982, because of low ridership (no more than 800 trips were made on lift-equipped buses by handicapped persons in any year), the overwhelming success with the user-side program, and an agreement with a group of individuals who had sued the system in 1976, Milwaukee County stopped operating the lift-equipped buses and devoted all its funding for handicapped transportation to the user-side subsidy program. (3) In 1983, some 240,000 trips were made by handicapped persons under the user-side procedure. Users paid an average of $1.75 out of the total average cost per trip of $8.85. (4)

User-side subsidies for specialized transit are also found in Pittsburgh; Kansas City, Missouri; Montgomery, Alabama; Lawrence, Massachusetts; Kingston, North Carolina; and Danville, Illinois. (5)

Strengths and Weaknesses

Providing specialized transportation with private operators under contract in Westchester and Suffolk has proven satisfactory. This evaluation, however, is based on the absence of significant complaints since adequate operating and financial statistics are not available. However, the Rochester-Genesee Regional Transportation Authority in upstate New York found its private provider of elderly and handicapped service unsatisfactory from both financial and service quality perspectives and has transferred its specialized transportation service to its public sector operating subsidiary.

A major economic advantage of a user-side program is that only trips that are made are subsidized. Additionally, the user-side subsidy has become popular with many elderly and handicapped who require accessible vehicles and thus can be assured that appropriate equipment will be provided. Such confidence is usually lacking when a transit fleet has only a percentage of lift-equipped vehicles.

The negative aspect of a user-side subsidy program is the increased administrative effort required to keep track of passenger eligibility, rides completed, operator performance, etc.

Barriers

Public sector driver unions may use Section 13(c) of the UMT Act, as well as local labor contract provisions to obstruct contracting with private operators for specialized transit. The question of how Section 13(c) applies to paratransit operators is complex and is developed more in Chapter 2. Another barrier to private operation of specialized transit is high liability insurance rates. The insurance issue applies not only to vehicle operation but also to drivers assisting passengers in boarding and alighting. Some transit authorities have found that private operators of specialized transit give their drivers only minimal training in appropriate passenger assistance.

## C. Transportation Brokerage

This mode of providing public transportation service originated primarily at the University of Tennessee in Knoxville. The brokerage concept postulates that in most urban areas the demand for and supply of public transportation are in approximate balance but that the matching of the two is frequently poor, resulting in inefficient resource utilization. A transportation broker increases efficiency by identifying the needs of the market and matching them with the suppliers that are most appropriate, be they public or private operators.

### Examples

Knoxville was the first metropolitan area to adopt brokerage in the mid-1970's. A system utilizing a number of transit and paratransit operators was designed. The first broker was the Transportation Center at the University of Tennessee under contract to the City. (6) The brokerage concept has also been utilized in Minneapolis, Pittsburgh, and Chicago to match consumer travel needs with carpools, vanpools, buses, taxis, non-profit van service, and subscription bus service. (7)

### Strengths and Weaknesses

The Knoxville demonstration initiated some useful regulatory reforms. For example, all Tennessee commuter vehicles carrying 15 passenger or less were exempted from government regulation except for safety and insurance requirements. Another reform with national implications was an adjustment of insurance rates such that privately owned vans were classified as automobiles, and a new classification was created for leased and employer-owned vans. (8)

However, the Knoxville demonstration, at best, shifted only about 1% of area residents to a higher-occupancy public transportation mode, and some of these were only temporary changes. While negative evaluations of brokerage should be tempered by the observation that the concept is still new, it would appear that brokerage will not be widely practiced until transit authorities realize that service need not be provided in-house but can be contracted to private operators, often with greater efficiency and economy.

### Barriers

The lack of significant success achieved by brokerage in Knoxville noted above originated in part from inadequate planning and an insufficient staff. Section 13(c) is also a potential barrier to a full implementation of brokerage as is the current attitude existing in many transit authorities.

## III. ASSESSMENT OF PRIVATE SECTOR ROLES IN POTENTIALLY SELF-SUFFICIENT SERVICES

A number of public transportation services have a favorable ratio of revenues to costs such that they are performed by private operators in many parts of the U. S. without government subsidy. These services include commuter express, subscription busing, vanpools, taxis, and airport ground transportation. Although government agencies plan, market, and subsidize these services in some areas, their potential for profits continues to make them more attractive to a larger number of private entrepreneurs than perennially deficit bus operations such as local transit service. The components of these services that are conducive to profits include

various combinations of non-union labor, low wage rates, high load factors, and high fares. Commuter express buses, subscription buses, and vanpools serve the periodic, high volume work commutation flows, while taxis and airport ground transportation serve multiple trip purposes with random departure times.

## A. Commuter Express Busing

Commuter express buses pick up passengers at a limited number of stops, traverse a trunkline section at highway speeds with few or no stops, and then discharge passengers again at a limited number of stops. Trip length is usually a minimum of 15 miles. This mode is open to the public on a daily basis; fares may be paid on a daily, weekly, or monthly basis; the number of discharge stops is usually more than subscription busing; seating is not guaranteed; and the usual equipment is suburban or intercity coaches, not school type vehicles. Additionally, this service usually operates in transportation corridors of established high demand. Finally, commuter express service is more likely to be operated by an established firm than subscription service.

### Examples

With the largest transit ridership of any U. S. city, New York City attracts the largest number of private sector commuter express buses originating both in New York and New Jersey. Up to 3,000 privately operated buses enter the New York City CBD daily, originating up to 70 miles away. (9) In upstate New York, however, private sector commuter express busing is limited with some service in Albany, Utica, and Syracuse. Rochester has an extensive commuter bus express service, but it is publicly operated. National examples include private sector commuter express services operating from Columbia, Maryland, and Reston, Virginia, to Washington, D.C. In Los Angeles, six private companies operate approximately 140 buses on 132 routes serving 5,000 commuters daily. (10)

### Strengths and Weaknesses

A recent study at the University of Pennsylvania postulated a broad range of demographic, fare, distance, and speed parameters within which commuter express service could be profitable. Included in these parameters was a high population density, a high speed highway for the trunkline section, remunerative fares, and no low cost, low quality alternative service. (11)

Using real world examples, in the populous Los Angeles corridors, private carriers have been operating commuter service at a farebox recovery ratio of 1.06, compared with .49 for the Southern California Regional Transportation District (SCRTD). The private carriers save money with lower wages, lower administrative expenses, part-time drivers, more flexible work rules, older equipment, and elimination of deadheading by parking buses at the end of runs. (12) In New York City, some private sector commuter express buses operated without subsidy as recently as 1982. Subsequently, however, operating assistance has been necessary and has been provided annually by the state government. (13)

A potential disadvantage of private sector commuter buses is the resultant congestion in central business districts if there is no restraint on the firms offering service. The New York City Department of Transportation (NYCDOT) testified before a Congressional committee in 1984 reviewing the 1982 bus deregulation legislation.

NYCDOT noted that a significant increase in private sector commuter buses had added to the congestion on city streets, decreased air quality through continuous idling, and clogged curbside parking areas. (14) Passengers for these additional buses have mostly switched from the publicly subsidized carriers, thus increasing the subsidy needs. For example, Metro-North, the commuter railroad due north of New York City, showed a 10% or approximately 400 a.m. passenger loss on its Upper Harlem Line to commuter express buses for the latter part of 1983. (15)

Elaborating on this last point, where there is a considerable investment in publicly provided commuter services such as a commuter rail line, allowing private sector bus lines to draw off passengers exacerbates the subsidy needs of the public operator. In such a situation, private sector commuter express buses are beneficial if rail service can be correspondingly reduced or the quality of existing rail service is deficient. In either case, sufficient roadway capacity for the express bus service is also necessary.

In all cases, careful analysis is needed to demonstrate that the total cost to society can be reduced by private sector provision of commuter express service in particular transportation corridors.

Barriers

The potential for profits in express commuter service makes it attractive to private sector operators and public transit authorities alike. Public transit authorities, therefore, resist private sector competition with its potential for jeopardizing their revenue/subsidy relationships. For example, New York City's Metropolitan Transportation Authority (MTA) objected at numerous public hearings to the application of a private bus operator for authority to run commuter express service from Westchester County to New York City. (16) Additionally, the Washington Metropolitan Area Transportation Authority opposed the Reston Commuter Bus in 1973-75. (17)

Where the express commuter market is regulated, therefore, as in New York, private operators must usually demonstrate that the service they are offering is not duplicative of existing service. If a public authority already provides a low-fare subsidized service, there is little incentive for a private operator to compete unless it can charge lower fares or provide significantly superior service so as to attract enough patronage to meet its full costs through the farebox.

B. Subscription Busing

This service utilizes a vehicle carrying forty to fifty passengers from a limited number of pick-up stops to a single or limited number of work sites. The service is open to subscribers on a weekly or monthly basis, not to the general public on a daily basis. Each passenger has a guaranteed seat and vehicles are run at or near capacity. Vehicle quality ranges from used school bus to intercity coach. Drivers are frequently part time and may work at one of the destination sites. Involvement of major employers ranges from none to some assistance in planning, identification of potential passengers, advertising, and fare collection. Such service is not attractive to passengers or operators at distances of less than 15 miles. In order to fill a bus with enough commuters living 15 or more miles from a worksite, yet reasonable close to each other, there needs to be well over 1,000 employees at the worksite. (18)

Examples

In New York, little data has been collected on subscription busing. It has been observed, however, that the large (approximately 14,600 people) General Electric employment center in Schenectady has stimulated the development of at least three small bus lines originating as subscription services. In the Syracuse area, a subscription service was started by an established private carrier but then dropped when ridership and fares did not cover operating costs. This service was subsequently resumed by the regional transportation authority. Subsidies and greater marketing efforts have produced revenues adequate to cover operating costs.

With little federally sponsored research on subscription busing, the main sources of national data are private research efforts. The Conference Board surveyed 235 companies and found that 10% were served by subscription busing. (19) In a 1983 survey by the American Association of State Highway and Transportation Officials, 33 states reported 197 bus pool systems using 1,084 buses. (20) A recent master's thesis at the Northwestern University cited over 110 vehicles in subscription service in the southwestern quadrant of Chicago. Here private sector initiative provided service with a lower fare but also lower quality. This service attracted approximately 6,000 passengers per day from the publicly subsidized commuter railroad. (21)

Strengths and Weaknesses

Commuters travelling by subscription bus have a reserved seat on a vehicle which stops a few blocks from their homes and takes them directly to work. In most cases, the fare is less than the full costs of operating an automobile for commutation. Employers served by subscription busing may save on parking lot construction and maintenance and will benefit from a work force that has better attendance and productivity. Documenting the advantage to society of private subscription service over public transit service requires more careful analysis, however. The Chicago study cited above concluded that only if the publicly subsidized commuter railroad acknowledged its passenger losses by reducing the number of trains would the total cost to society of commutation in the corridor be reduced by private sector subscription buses. Unfortunately, this study did not analyze the increased congestion costs resulting from the addition of 120 buses to the downtown Chicago and radial corridor traffic. This added consideration would make the social benefit of subscription busing in this particular corridor even less clear.

Considering a less complex economic situation than the above, a realistic scenario can be constructed in which the benefits of private sector subscription busing appreciably exceed the costs. Using some of the factors mentioned above, a private sector subscription service can maximize its advantages by utilizing part-time drivers and used buses, by being the sole operator in a transit corridor, by carrying near-capacity loads, and by charging fares that cover operating and capital costs. It also reduces costs if deadheading can be eliminated by parking the vehicle at each end of the run. Any relaxation of these conditions increases the probability that subsidy will be needed. Even so, indications are that a private sector subscription bus will require less subsidy than a public sector provider. A private sector subscription bus in Bridgeport, Connecticut, was estimated to require about half the subsidy of the same service provided by the local transit authority. (22)

Barriers

A major barrier to expansion of private sector subscription service is the marketing required. Unless there is a commuter flow to a major worksite that is unserved by public transportation, marketing is required to identify passengers, advertise service, sign up interested riders, plan routes, schedule runs, etc. Small private operators are frequently capable of offering subscription service only if the need has been clearly identified. The ideal environment for expansion would utilize the marketing expertise of a transit authority oriented toward brokerage, i.e. interested in providing transportation service at the least cost, regardless of whether the provider is a public or private operator. Few transit authorities have this orientation. Most prefer to increase the number of services provided by their public sector subsidiaries. Another barrier is a reluctance by private operators to schedule subscription work which conflicts with more lucrative charter trips. Finally, employers may perceive subscription service negatively if it encourages employees to leave promptly when overtime work is necessary.

C. Vanpools

Vanpooling utilizes vans of 12 to 15 passenger capacity to carry commuters to worksites. For vanpooling to maximize cost-effectiveness and social benefits, the following are necessary. The commuting distance should be greater than ten miles. There should not be a competing commuter transportation mode with higher occupancy vehicles available. The passenger list must be pre-arranged, not open to the public on a daily basis.

Vanpooling currently operates under four institutional arrangements: non-profit owner-operated, owner-operated for profit, company-owned, and third-party operated. Owner-operated vans have the greatest financial risk for the individual, but both public and private organizations have issued vanpool operational guides. Simply stated, the primary operational objective is to keep a vanpool at capacity, so that all costs are covered.

When a company operates a vanpool program, an individual's capital is not at risk. In this case, the driver simply assists in fare collection, routine vehicle service, and maintenance of full passenger loads. In third-party arrangements, a non-profit organization such as a bridge authority or a group of employers combined into a transportation management association procures and services the vehicles. The driver has similar responsibilities to a company-owned program. Third-party vanpools are sometimes operated to stimulate the formation of owner operator vanpools. For example, the Golden Gate Bridge Authority in San Francisco leases their "seed" vehicles for only a fixed period of time. At the end of this period, the vanpool either obtains its own vehicle or ceases operation.

Examples

A recent private sector study revealed that, of 235 U. S. companies surveyed, 57% (134) participated in vanpool programs. (23) An extensive annual survey of vanpool programs is performed by the American Association of State Highway and Transportation Officials (AASHTO). In a 1983 survey of 44 states, AASHTO counted 11,802 vehicles in 1,980 systems, with owner-operators being the dominant mode of organization by almost five to one. In the East, New Jersey and Connecticut were

significantly ahead of New York in corporate-sponsored programs, but no New York statistic was recorded for owner-operated vans. (24) The significance of this omission is that New York City has experienced an influx of approximately 300 vans operating as for hire commuter carriers in competition with publicly operated transit vehicles.

In suburb to suburb operations, New York has a large number of vans operating to the new office complexes in Westchester County from New Jersey and Connecticut, as well as a number of contiguous New York counties. These vehicles are both non-profit owner-operated and third party provided by Metropool of Connecticut. Metropool is a non-profit corporation funded in part by large Westchester employers. In upstate New York, Corning Glass has some 45 vans operating in a company-owned operation while on Long Island, vanpooling has great potential but awaits promotion by private and public agencies. (25)

Strengths and Weaknesses

A study of van operations in New York City concluded than van services were siphoning off between $12 and $20 million of farebox revenue annually from subsidized carriers, both public and private sector, and that 95% of van passengers transferred from higher occupancy public transportation modes. (26) The social costs of increased van usage which draws patronage from higher occupancy modes are greater congestion around CBD pick-up and drop points, and increased fuel consumption and air pollution for the urbanized area as a whole.

Other costs associated with vanpooling may include the following. A public body such as the Golden Gate Bridge Authority incurs some capital costs when purchasing "seed" vehicles in order to stimulate vanpools. From an employer's perspective, company-owned vanpools require an initial capital outlay for vehicles; the dedication of administrative time for organization, licensing, fare collection, insurance, and vehicle maintenance; and a recognition that the prompt daily departure of vanpooling employees will complicate scheduling for companies that authorize overtime work. On the benefit side, companies operating vanpools can often reduce the costs of parking lot construction and maintenance, may realize increased employee attendance and productivity, may experience decreased congestion at shift changes, and may gain favorable publicity from their attention to such civic-minded goals as fuel conservation and employee welfare.

Barriers

Barriers to implementation of vanpooling are: too few employees at a workside, a commuting distance that is too short, an employer who sees only the costs and not the advantages, and highly variable work schedules among potential passengers. Additional barriers may be insurance companies rating vanpools as common carriers rather than carpools, transit authorities oriented toward filling transit vehicles rather than moving people to their destinations most efficiently, transit unions viewing vanpools as threats to driver employment, and apprehensions among potential owner-operators as to liabilities and costs.

D. Taxi Services

Taxis provide a number of public transportation services. In some communities, taxis are the sole means of public transit while in others they substitute for transit in periods of low demand. Taxis are relevant to this study to the extent

that their potential for carrying multiple parties to multiple destinations at low cost is often neglected.

Examples

Santa Fe, New Mexico contracts with local taxi operators to provide public transit service in lieu of a publicly owned and operated bus system. The contracts obligate the taxi operators to provide 24-hour shared-ride service. Payment is made through a user-side program in which the user pays half the fare and the city pays the other half. In 1983, the average trip length was 2.2 miles and cost approximately $4.16, of which the user paid $2.06. About 90,000 trips were made in 1983 at a cost to Santa Fe of about $188,000. (27)

Ann Arbor, Michigan has been contracting with a local taxi company to provide late-night, shared-ride service since early 1982. The service, operating from 11:00 p.m. to 6:00 a.m. seven days a week, was initiated in response to public concern about the absence of transit during those hours. The Ann Arbor Transportation Authority had operated a dial-a-ride service during the early evening hours, which had proven too expensive. Consequently, the local taxi operators were approached about providing the service, since they were required to operate all night and had excess capacity. A contract for the service was awarded to one of the taxi operators based on a subsidy of $6.00 per vehicle hour. However, ridership the first year, almost 15,000, was lower than anticipated. At the end of the first year of service, the operator requested and received a subsidy increase to $7.50 per vehicle hour. (28)

Strengths and Weaknesses

Utilizing taxis to provide transit service has benefitted both the communities involved and the taxi operators. Phoenix saved approximately $1.25 million in its 1983 fiscal year by contracting out Sunday service. (29) Santa Fe, in 1983, was able to provide 90,000 trips at a total cost of only $188,000. The night service in Ann Arbor has been successful in meeting a perceived public need at a subsidy per passenger the first year of service of $1.80. Additionally, the taxi industry, which has been under financial strain, has benefitted from the new revenue where communities have utilized its service. A weakness is that many communities lack taxi service of the caliber necessary for substitute transit service.

Barriers

Many communities prohibit shared-ride taxi service. Besides making taxi service ineligible for federal funding, this prohibition increases fares and, thus, reduces the utility of taxis as a transit substitute. Another potential barrier is Section 13(c). The applicability of 13(c) to the taxi industry is not clear. California communities using taxis as substitutes for transit have managed to avoid 13(c) problems by not using federal funds. Finally, local labor contracts may also prohibit a transit agency from contracting service with taxi operators.

E. Airport Ground Transportation Service

Airport ground transportation service shares some features with subscription and commuter express services. Airport service picks up passengers at a limited number of stops, traverses a high-speed trunkline section, and then discharges

passengers also at a limited number of stops. At this point, the service characteristics diverge markedly. Airport service does not have the daily peaked demands of commuter services though weekly and seasonal peaks occur. The daily service period for most airports is approximately 18 hours. Business travelers and students constitute repeat traffic, but seldom more frequently than once a week. The remaining traffic, largely tourists and visitors, is frequently unfamiliar with an individual airport's ground transportation services.

Airline passengers are usually willing to pay premium fares for a quality service. This market, therefore, generates intense competition from numerous public and private providers including private cars, rental cars, private limousine service, taxis, hotel buses, tour buses, public bus or rail service, and airport coach and limousine service.

Examples

Two of the oldest airport coach services are Carey Bus Service in New York City and Continental Air Transport in Chicago. Both compete with public sector rapid rail services. Los Angeles International Airport has both a privately provided premium service and a base service provided by SCRTD. The latter service primarily carries airport workers lacking personal transportation. (30) Airport ground transportation services may carry passengers over long distances. New York has one carrier transporting passengers approximately 180 miles from Albany to JFK airport.

Strengths and Weaknesses

Private sector airport transportation services usually cover their costs and profits out of the farebox. New York is an exception in that it has provided operating assistance to specific airport transportation services whose routes, service levels, and profits were regulated by NYSDOT. This program is under review, however.

Recent UMTA regulations have made the revenue vehicle miles of airport coach services eligible to earn Section 9 assistance for an urbanized area if such services are provided under contract to a government body. Such assistance is seldom received by the carrier, as local government sponsors usually divert such funds to more deficit-ridden local services. Where rapid rail services extend to airports, for example, New York City, Cleveland, Washington, and Chicago, capital and operating subsidies are required.

Barriers

The major barriers to further private sector participation in airport service include the strenuous competition for traffic and the difficulty in securing long-term operating agreements with airport managements. When local public transit operators offer high speed service at subsidized fares, private operators with unsubsidized fares are hard pressed to compete. Additionally, the economics of airport ground transportation are not conducive to cooperation from airport managements. Typically, airport managements receive 90% of all parking fees and 10% of all car rental contracts. Contrast this with the 10% of airport ground transportation fares from less than 10% of the airport's customers, and the lukewarm promotion of airport ground transportation by many airport managements is

readily understood. Add to this the frequent disputes among the many ground transportation services as they compete for incoming passengers, and a clearer picture emerges of why airport ground transportation has a difficult relationship with many airport managements.

## IV. ASSESSMENT OF PRIVATE SECTOR ROLES IN OTHER AREAS OF PUBLIC TRANSPORTATION

The objective here is to describe the current level of, and potential for, private sector involvement in aspects of public transportation not directly providing service to the public. Included here are equipment purchasing, leasing, and rehabilitation; maintenance by contract and in jointly occupied facilities; and management by contract.

### A. Equipment Purchasing, Leasing and Rehabilitation

The decision of the federal government to provide capital for U. S. transit system in the mid 1960's prompted a resurgence among equipment suppliers, lessors, and rebuilders. The provision of capital by federal, state, and local governments, however, kept the involvement of private sector capital markets in the transit industry modest. This section will, therefore, highlight innovations available to public transportation operators, particularly in the private sector, to obtain the most appropriate equipment for their service.

#### Examples

Industry trade journals regularly carry advertising from financial institutions offering to lease equipment to operators. For example, Ryder Truck Lines offers a turn-key package to operators in which Ryder purchases and maintain commuter buses under a lease agreement with operators. (31) Dallas is making extensive use of this program for commuter and local service. (32)

In some instances, equipment vendors will assist purchasers in the financing of new equipment. One of the largest examples of this was the financing of new subway cars for the New York City Transit Authority by Kawasaki Industries of Japan and Bombardier of Canada.

Looking at small private carriers operating both scheduled and charter service, new vehicles for scheduled service may be provided 80% by the federal government and 20% from local sources. In the early years of the federal capital grants program, private carriers sometimes borrowed money for the local share. This loan would then be paid off through charter revenues. This is still the practice in some states. In recent years, however, New York has paid the 20% local share of capital equipment for even private operators. Vehicle ownership is then held by the county where the private operator is located. In New York's Suffolk County, the County government handles the entire bus purchase procedure to secure vehicles for scheduled service. It then leases these vehicles for a nominal sum to the private operators holding the service contracts. Many operators also own other vehicles which they use for charter and school contracts.

Large transit properties sometimes extend the service life of line vehicles through rehabilitation. Some operators with severe capital restraints may use rehabilitated vehicles as the basis of their fleets. The Washington, D.C. transit system is currently operating vehicles rehabilitated by Blitz of Chicago while the

Albany, New York public authority is rebuilding some of its vehicles in-house. Costs are difficult to compare since the degree of rehabilitation varies with each order.

Strengths and Weaknesses

Major benefits of leasing over purchasing vehicles include the facilitation of experimental service innovations at minimal capital risk and the meeting of short term equipment needs, such as the Los Angeles Olympics or New York City's banning of the Flxible 870's. These advantages are available to private and public operators alike, though restrictive regulations may prohibit operating subsidies for leased vehicles.

The availability of new vehicles to private operators which are purchased and owned by government agencies means that the riding public is served with reliable, safe equipment at minimal capital risk to the private operator. A potential disadvantage when no local capital is required is inadequate vehicle maintenance producing a reduced useful life. Both public and private operators have demonstrated this tendency.

Public authorities and private operators who rebuild vehicles in-house may use such work to facilitate labor scheduling in their maintenance department and also to train new mechanics. Private operators may make their maintenance facility a profit center through vehicle rehabilitation. However, when an operator needs a large number of rehabilitated vehicles, a private firm dedicated to this function can perform the work most efficiently.

Barriers

As mentioned earlier, private sector operators may be limited in their ability to lease vehicles if the service they provide is subsidized but has no provision for leased vehicles. UMTA is considering modifications in its regulations to remove this disadvantage. From the perspective of the lessor, if the national deregulation of the bus industry follows the precedent of the trucking industry, there will be expansion in the bus leasing market.

Regarding new vehicles, most industry analysts state that there are currently too many suppliers, yet the influx of foreign manufacturers continues. These suppliers are obviously gambling that, for the foreseeable future, it will not be politically feasible to terminate transit capital subsidies. Thus, if a firm has vehicle design and construction expertise, the only apparent barrier to entering the equipment market is the satisfaction of such federal regulations as disadvantaged business enterprise participation, etc.

B. Maintenance Facilities and Maintenance Contracts

This section describes the current status of joint use of maintenance facilities by private and public operators and also of vehicle maintenance performed in the private sector by contract.

Examples

Currently, Syracuse, New York, is the only known example of a public transportation maintenance facility jointly utilized by both public and private operators. The private operator leases approximately 10% of the facility. In Westchester County, a private firm has rebuilt a manufacturing plant into a centralized maintenance shop. This firm leases the facility to the county at market rates, which then leases the facility to the major operator for a nominal fee. The principals of the firm owning the facility and the major operator are identical. Some of the smaller Westchester operators also use this facility.

A few public operators contract with the private sector for vehicle maintenance. These are usually small van fleets operated by non-profit agencies with public funds, open to the general public, but emphasizing transportation for the elderly, young, handicapped, and low income populations. In upstate New York, Chenango Opportunities, Inc. in Norwich maintains its vehicles this way.

Finally, almost all public and private operators have some specialized maintenance functions such as component rebuilding and tire service performed by private vendors due to a combination of the expertise and specialized equipment those services require.

Strengths and Weaknesses

When public sector maintenance facilities are not available as public transportation service is being initiated in an area, it is economically more prudent to contract the maintenance of vehicles to private firms than to construct new public sector facilities, particularly if the viability of the new service is questionable.

When transportation is provided by a fixed fee contract with a private operator, that operator has a stronger incentive to control maintenance costs than a public operator whose costs are usually covered by farebox revenues plus subsidies. However, the cost minimizing attitude of private operators requires an inspection program to ensure that vehicles are maintained to acceptable standards. When public and private operators in the same locale need new maintenance shops, putting them in a common facility provides a comparison of maintenance costs and effectiveness.

Barriers

Barriers to private sector maintenance of public transportation vehicles are minimal when either the transportation service is new or has been recently operated by a private operator. However, when transportation service and vehicle maintenance have regularly operated in the public sector, the federal government provides job protection for maintenance employees under 13(c) provisions. Some public operators are negotiating with employee unions to contract out specific maintenance functions. The success of these negotiations varies according to respective negotiating skills, union militancy, and economic conditions.

## C. Transit Management by Contract

Contract management is a form of private involvement used by a number of transit systems, particularly in the southeastern quadrant of the U. S. Under contract management, drivers and mechanics are either public sector employees of the authority or municipality where the service is provided or employees of the private sector management firm. Transit management firms gained popularity in the early 1970's as newly formed public transit authorities looked for expertise.

### Examples

Close to 100 transit operations, including such systems as Cincinnati, Indianapolis, and Memphis, contract with a transit management firm. In New York State, three areas currently using the services of transit management firms are Poughkeepsie, Jamestown, and Chemung County.

The City of Poughkeepsie contracts with a management firm to provide complete management, maintenance, and consultation services for the operation of the public transportation facilities owned or leased by the City. The responsibilities of the management firm include: development and supervision of routes and schedules, inspection and maintenance of the city system equipment and facilities, public relations, personnel, operations reports to the City, and consultation and planning. These responsibilities are carried out by a full-time manager and a mechanic.

Chemung County, including the City of Elmira, contracts with a management firm for its county mass transit system. The management firm provides Chemung County with a manager to handle the day-to-day operation of the system. Included in the duties are labor relations, marketing, public relations, maintenance supervision, accounting, and operations/budgeting. The management firm also provides any consulting or technical assistance which may be needed.

Though not generally considered in this category, the Westchester system is evolving into a contract management operation. This assertion stems from the observation that, for intra-county operations, Westchester operators have little capital at risk. This concept will be developed in Appendix C.

### Strengths and Weaknesses

The availability of transit management firms allows municipalities to quickly obtain professional management when it is not available locally. It also allows for greater local government control than operations under public authorities established by state governments. Some municipalities, however, consider management fees to be too high and are, therefore, establishing their own public sector staffs. Additionally, national studies are indicating that public transportation operations under contract management are not demonstrating superior performance on measures of economy or efficiency. The mediocre performance may result from the lack of incentives in management contracts. With no incentives for superior performance, hired managers tend to be less aggressive in the interests of labor peace. (33)

Barriers

The barrier most often cited to the utilization of management firms is cost as indicated above. Another barrier cited less frequently is restrictive provisions of local labor contracts.

## V. SUMMARY

The combination of increasing public transportation deficits, a recognition by some urban business organizations that public transportation's survival is important to the national and particular urban economies, and specific direction from UMTA are all serving to promote private sector involvement in public transportation. However, a number of barriers continue to obstruct increased private participation.

Basic mobility transportation services, specifically local transit, elderly and handicapped service, and transportation brokerage, seldom generate a favorable ratio of revenues to costs. Therefore, if no subsidies are available, private for-profit operators have no incentive to provide these services. However, where these services are provided by subsidized private operators, NYSDOT analyses have demonstrated superior performance over parallel public operators, particularly in New York City and Westchester and Suffolk Counties. (34) In other parts of the U. S., specifically Johnson County, Kansas; Minneapolis; and San Diego, municipalities have opted out of public transit authorities and contracted for local service with less costly private operators. Private sector operation of specialized transit services is working well in Westchester and Suffolk County, but Rochester, New York has transferred this service back to public operation. User-side subsidies of specialized transit which make use of private operators work well in a few locations outside New York. To date, transit brokerage has enjoyed only limited success but has potential to the extent that public transit authorities perceive the economies and efficiencies potentially available through contracts with private operators.

In contrast to the provision of basic mobility, a number of public transportation services can generate profits, given the right market conditions. Consequently, numerous private operators provide these services which include commuter express and subscription buses, vanpools, taxis, and airport ground transportation. Exemplifying the unsubsidized private provision of these services:

1. Commuter express buses converge on Washington, D.C. from suburbs such as Reston, Virginia and Columbia, Maryland;

2. Numerous subscription buses originate in the southern suburbs of Chicago;

3. Vanpools have proliferated nationally, sometimes with public funds as seed money, but more commonly operated under private ownership or corporate sponsorship;

4. Taxis continue to operate largely unsubsidized with their potential for replacing transit service in low-demand periods largely underutilized;

5. Quality airport coach services operate out of Chicago's O'Hare Field and New York's JFK.

Other aspects of public transportation with opportunities for private participation include the provision of new vehicles by purchase, lease, or rehabilitation; vehicle maintenance in joint facilities or by contract; and transit management by contract. The need to subsidize transit capital equipment was recognized in the 1970's, prompting a resurgence among vehicle manufacturers. In 1986, however, too many manufacturers are pursuing a shrinking market.

For systems with limited access to capital or experimenting with new services, vehicle leasing or the use of rehabilitated equipment help to minimize financial risk. Joint use of maintenance facilities by public and private operators appears to work best where both operations are small to medium-sized and a cooperative spirit exists, a situation not often replicated. Contract management of public transportation system provides small or inexperienced municipal governments with ready expertise in transit but may prove costly over an extended period. Of the public transportation functions mentioned above, some are more appropriate for an increased private sector role than others based on the availability of private operators and the potential for improved efficiency and economy of operation. The potential for expansion of the private sector for various services is summarized below.

POTENTIAL FOR EXPANSION OF PRIVATE SECTOR ROLE

| TYPE | POTENTIAL |
|---|---|
| Basic Mobility Services--Subsidized | |
| Local Transit | Limited, with subsidy |
| Specialized Transit | Good, with subsidy |
| Transit Brokerage of Basic Services | Good |
| Potentially Self-Sufficient Services | |
| Commuter Express | Good |
| Subscription Bus | Limited to large worksites |
| Vanpool | Good |
| Taxis | Good |
| Airport Ground Transportation | Limited, markets saturated |
| Miscellaneous | |
| Equipment Purchasing, Leasing and Rehabilitation | Limited, market close to saturation |
| Maintenance Contracts and Joint Facilities | Limited |
| Contract Management | Limited |

The above should be qualified by noting than an oversupply of commuter express buses and vanpools has exacerbated both CBD congestion and the operating subsidy needs of public operators in New York City.

For expansion of the private sector role in the above services to occur, a number of barriers need to be overcome. The more significant include:

1. resistance from local transit authorities trying to preserve farebox revenues;

2. operators' unions using local contracts and 13(c) to prevent loss of union jobs;

3. lack of competent private operators; and

4. high premiums for vehicle insurance leased or owned by private operators.

Other factors which may limit the participation of private operators are geographic restrictions on operating authority imposed by state and local regulatory agencies and lack of operating subsidies from federal, state, or local governments.

In the second chapter of this study, the means by which the above barriers may be lowered or removed will be assessed. The assessment procedure will involve analyzing both the current status of applicable Federal and New York State regulations and representative types of local barriers.

## FOOTNOTES FOR CHAPTER 1

1. See, for example, Jones, David W., Jr., Urban Transit Policy--An Economic and Political History, Prentice Hall, Englewood Cliffs, 1985.

2. "Contracting for Service at San Diego Transit Corporation", Roger Snoble, USDOT/APTA, October, 1984, pp. 5 and 6 (Washington, D.C.).

3. Kirby, R. F. & Miller, G. K. (1983). A Casebook of Short-Range Actions to Improve Public Transportation, Washington, D.C.: The Urban Institute, pp. 43-47.

4. Telephone conversation with T. Knight of the Milwaukee County Transit System, January 31, 1984.

5. Kirby, R. F. & Ernst, U. F. W. (1981). "Involving Providers in Public Transportation Programs: Administrative Options." Washington, D.C.: U. S. Department of Transportation, p. 12.

6. Juster, R. D., Kruger, J. A. & Ruprecht, G. F. (1979). "The Knoxville Transportation Brokerage Demonstration Project: An Evaluation". Report to the Transportation Systems Center, Washington, D.C.: U. S. Department of Transportation, pp. 4-1 - 4-6.

7. U. S. Department of Transportation (1981). "Innovation in Public Transportation 1980". Report No. UMTA-MA-06-0086-81-1, Washington, D.C.: Urban Mass Transportation Administration, p. 161.

8. Juster, Kruger & Ruprecht (1979).

9. URS Company, Inc. (November, 1985). Express Bus Route Policy Study, New York, Table 2-1.

10. Commuter and Express Bus Service in the SCAG Region: A policy Analysis of Public and Private Operations (1982), Southern California Association of Governments - Transit Section, p. ii.

11. Morlok, Edward K., and Viton, Philip A., "The Feasibility of Profitable Transit Service in Radial Urban Corridors:, (1984) unpublished paper, Transportation Research Board, pp. 17 and 18.

12. Commuter and Express Bus Service in the SCAG Region (1982), p. iii.

13. 1982 Report on Transit Operating Performance in New York State (1982), Transit Division, NYSDOT, p. 71.

14. Statement Submitted by Mayor Edward I. Koch to the House Public Works and Transportation Subcommittee on Surface Transportation, (Wed., Nov. 23, 1983), p. 1.

15. Letter of Peter Stangl, Metro-North President and General Manager, (January 17, 1984), p. 3.

16. See, for example, Case #25907 - Vanguard Tours, Inc., application to operate as a contract carrier of passengers by motor vehicle, (May 3, 1982), New York State DOT, Division of Regulatory Affairs, p. 3.

17. Reimer, Richard (1978), "Regulatory Considerations for Alternatives to Conventional Transit Systems", in Urban Transportation Economics, National Academy of Sciences, Washington, D.C., pp. 95-97.

18. Kirby & Miller (1983), p. III-2.

19. Weber, Nathan, (1983), Transporting Employees: The New Corporate Programs, the Conference Board, NY, p. 10.

20. 1983 Survey of State Involvement in Public Transportation, American Association of State Highway and Transportation Officials, Washington, p. 14.

21. Schwieterman, Joseph P., (1983) "Competition in Mass Transit. "A Case Study of the Chicago Subscription Bus Phenomenon", Northwestern Unit, p. 7.

22. Dagerman, Lo (1984) "Private Bus Operators in Commuter Transportation - A Brokerage Implementation in Bridgeport, Conn." - unpublished paper, Transportation Research Board, p. 15.

23. Wieber, Nathan, (1983), p. 11.

24. 1983 Survey of State Involvement in Public Transportation, AASHTO, p. 11.

25. "Analysis of Public Services, Attitudes, Constraints and Employer/Employee Transportation Issues", Long Island Ridesharing Technical Memo #2 (1983), NY State Energy Office, pp. 13 and 20.

26. Transportation Training and Research Center (March 15, 1985) Commuter Van Service Policy Study--Technical Report #6 (City of New York: Department of City Planning), p. 2.

27. Telephone conversation with R. Montoya of the City of Santa Fe Planning Department, January 17, 1984.

28. White, G. C. (1983). "Late-Night, Shared-Ride Taxi Service in Ann Arbor, Michigan". Paper prepared on behalf of the Policy and Planning Committee of the American Public Transit Association, p. 1 and 4.

29. Telephone conversation with S. Dent from the City of Phoenix, January 18, 1984.

30. Excerpts from Southern California Rapid Transit District Report on Evaluation of Cost Savings, (Dec. 1983), p. II-14.

31. "Eagle Day 1983 Highlights Grand Opening of Harlingen Plant", Bus Ride, (April 1983), p. 84.

32. "Dallas Negotiates Its Way Out of the Commuter Business", New York Times (February 2, 1986), p. E-5.

33. Perry, James H., "Organization Form and Transit Performance: A research Review and Empirical Analysis". Report NO. UMTA-CA-11-0027-2, Washington, D.C.: Urban Mass Transportation Administration, p. vi.

34. Transit Division, NYSDOT, 1985 Report on Transit Operating Performance in New York State, October, 1985, pp. 111-46, - 111-62.

## CHAPTER TWO -- EVALUATION OF BARRIERS

### I. INTRODUCTION

Chapter 1 described private operator provision of a number of public transportation services by presenting examples, strengths and weaknesses, and barriers. This chapter focuses on the barriers considering federal, state, and local levels. The description of state and local barriers uses primarily New York State examples. The discussion of local barriers that are specific to the individual case studies, as well as prescriptions for barrier reduction, are reserved for Chapter 3 and Appendices A - C.

### II. REVIEW OF FEDERAL BARRIERS

The Urban Mass Transportation Act of 1964, as amended, was written to promote both public and private sector transportation services. Section 2(b) of the Act states that its purposes are:

1. to assist in the development of improved mass transportation facilities, equipment, techniques, and methods with the cooperation of mass transportation companies both public and private;

2. to encourage the planning and establishment of areawide urban mass transportation systems needed for economical and desirable urban development, with the cooperation of mass transportation companies both public and private; and

3. to provide assistance to state and local governments and their instrumentalities in financing such systems, to be operated by public or private mass transportation companies as determined by local needs.

While the UMT Act ostensibly encouraged cooperation between public and private sectors, certain provisions appear to have hindered such cooperation. This section examines those UMT Act provisions which encouraged the use of the private sector and those which acted as barriers.

#### A. Statutory Provision for the Private Sector

In order to ensure that private mass transportation companies were given the full opportunity to provide public transportation, Section 3(e) of the UMT Act prohibited the use of federal aid for acquiring or competing with the private mass transportation companies with certain exceptions. Those exceptions were:

1. The Secretary of Transportation finds that such assistance is essential to the program of projects required by Section 8 of the Act;

2. The Secretary of Transportation finds that such program, to the maximum extent feasible, provides for the participation of private mass transportation companies;

3. Just and adequate compensation will be paid to such companies for acquisition of their franchises or property to the extent required by applicable state or local laws;

4. The Secretary of Labor certifies that such assistance complies with the requirements of Section 13(c) of the Act.

The exceptions in Section 3(e) have neither hindered nor encouraged private participation. In fact, Section 3(e) in general has produced few problems from a private sector viewpoint. UMTA has been careful to avoid creating conflicts between the private and public sectors, and its efforts have produced few complaints.

Although Section 3(e) is the primary means of protecting private sector participation, the UMT Act has other protective clauses. Section 8(e) states that the program of projects mentioned above, as well as other plans and programs required by Section 8, shall encourage to the maximum extent feasible the participation of private enterprise. Additionally, provisions are made in other sections of the Act which allow the private sector to provide input and comments.

The Urban Mass Transportation Administration has further encouraged private sector participation with the issuance of its Paratransit Policy in October 1982. It is UMTA's belief that paratransit, in general, can be provided most responsively in a free market environment and that the private sector can provide such services in many communities. The policy encourages private transportation carriers to develop paratransit services wherever possible. Additionally, localities are encouraged to make use of the private sector's ability to provide unsubsidized paratransit services. This does not, however, seem very realistic given the high cost per trip of paratransit services experienced by U. S. transit systems. UMTA therefore says that if public investment becomes necessary, localities are still encouraged to contract with private paratransit providers.

Prior to 1984, the enforcement of Section 3(e) and Section 8(e) by UMTA was limited to addressing individuals complaints concerning the takeover of private operators without the benefit of a policy governing the implementation of the above sections. In 1984, UMTA promulgated a policy on Private Enterprise Participation which provides the framework for private involvement through the local planning process. In January, 1986, UMTA issued specific guidelines for involving local private opertors. The new planning requirements are reviewed in the subsequent discussion of the MPO Planning Process.

B. Barriers to Private Sector Participation

1. Section 13(c) - Labor Protections

Despite sections of the UMTA Act which encourage public/private cooperation, and despite UMTA policy statements which promoted the use of the private sector, other sections of the Act discouraged such cooperation. The section of the UMT Act with the greatest potential to prevent private participation is 13(c). That section states:

> "It shall be a condition of any assistance under Section 3 of this Act that fair and equitable arrangements are made, as determined by the Secretary of Labor, to protect the interests of employees affected by such assistance. Such protective arrangements shall include such provisions as may be necessary for (1) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective

bargaining agreements; (2) the continuation of collective bargaining rights; (3) the protection of individual employees against a worsening of their positions with respect to their employment; (4) assurances of employment to employees of acquired mass transportation systems and priority of reemployment of employees terminated or laid off; and (5) paid training or retraining programs."

These Section 13(c) provisions, besides being applicable to capital assistance under Section 3, were extended to include Section 5 operating assistance with the passage of the National Mass Transportation Assistance Act of 1974 and incorporated in the new Section 9 programs and the Section 18 program.

Congress included the Section 13(c) amendment in the UMT Act to address the concern that federal funds used to purchase private companies might adversely affect the employees of those companies. The amendment's intent was to protect existing jobs, benefits, and rights of those employees, or else compensate those who lost their positions. In fact, most private operator employees in the late 1960's had low wages and were eager to become public sector employees.

Responsibility for carrying out the 13(c) process belongs to the Department of Labor (DOL). When UMTA receives an application for assistance subject to 13(c) provisions, a copy is forwarded to the DOL with a request that a certification of employee protective arrangements be issued. It is the Secretary of Labor's responsibility to ensure that employees who are adversely affected be given "fair and equitable" protective arrangements. These arrangements are expected to be the product of labor/management negotiations.

However, since UMTA cannot issue a grant until the Secretary of Labor approves, and since the Secretary of Labor will not approve until the appropriate union has made a 13(c) sign-off, transit management is under pressure to accede to union demands in order to receive federal assistance in a timely fashion. Although the DOL's rules on 13(c) include provisions for a time limit, they are not very specific and have not been enforced. Thus, when the DOL submits the employee protective arrangements to the appropriate union for approval, the union can delay agreement in an effort to secure more favorable arrangements. This has resulted in agreements between labor and management exceeding the original intent of protecting existing employees whose employer was being acquired by a public entity. Although some transit managements have allowed themselves to be tightly constrained by labor agreements through a lack of bargaining skill, the ambiguity of the 13(c) process has also contributed to an unnecessary relinquishing of management rights.

Such "pressured" agreements have given organized labor benefits exceeding normal employee protections which probably would not have been gained without Section 13(c). A former UMTA administrator testifying before a subcommittee of the House Public Works and Transportation Committee in 1981 cited examples of unwarranted advantages gained by labor through 13(c) negotiations:

1. The inclusion in numerous agreements of binding interest arbitration which has directly affected the collective bargaining process, particularly regarding wages.

2. The right to all new federally assisted work.

3. The inclusion in almost all agreements of a clause prohibiting paratransit projects from competing with or displacing line haul service.

Such provisions have created barriers to the use of the private sector. For example, a transit operator with a 13(c) agreement which cedes the right to all new federally assisted work to the labor unions may be prevented from contracting for transit service with the private sector. In 1981, UMTA rejected a capital grant application from Bridgeport, Connecticut ruling that the 13(c) agreement with the local union went too far beyond the statutory regulations in restricting the services that the existing authority could contract with private operators.

Some Section 13(c) agreements have also contained provisions guaranteeing the size of the transit union bargaining unit for a specific number of years. Projects in Knoxville (related to the brokerage program), San Francisco, and Norfolk have contained such provisions. These provisions severely constrain public operators from making service cutbacks or contracting with private operators. As a result, it has become generally recognized that private operator contracts are more readily established for new rather than existing services. However, future service expansion will be limited by fixed or decreasing government subsidies. Driver unions can therefore be expected to use 13(c) to resist conversion of existing service to private operation.

A further potential barrier to private participation is the ambiguity of 13(c)'s applicability to private operator employees. If, for example, a private operator provides contracted service to a local government receiving federal assistance and then loses the contract at renewal time, would the employees of the first company be entitled to compensation under 13(c)? In practice, this situation is addressed by a provision of the model 13(c) agreement developed in 1975 by the American Public Transit Association (APTA) and the potentially affected unions. This provision states that employees who have their position worsened as a result of the termination of federal funding of a project will not be eligible for compensation. Since federal operating assistance is awarded on an annual basis, a local government wishing to provide for a potential change in contractors could, therefore, write its contracts for the same time period as federal operating assistance, i.e., one year. Such a contract termination occurred in Suffolk in 1985, but no 13(c) action was initiated. However, this solution does not address the situations where a transit district has not adopted the Model Agreement in full or where a sign-off is needed for federal assistance on a multi-year capital project.

The preceding discussion indicates that Section 13(c), as presently formulated, has provided inadequate guidance for both labor and management. Questions such as, what does "fair and equitable" mean, or how long does a 13(c) agreement last, have arisen, which the DOL's guidelines (last issued in March, 1978) have been unable to answer. Efforts to clarity and simplify these guidelines were made in 1983 when a joint DOT-DOL Task Force proposed new procedures for handling such situations as terminating all or part of a UMTA project, the durations and applicability of 13(c) arrangements, the applicability of 13(c) to employees of independent contractors of a mass transit agency, and the undue delay in the negotiation of 13(c) arrangements. However, when the proposes guidelines were released for comment in May, 1983, labor unions strongly attacked them, saying that if implemented, they would seriously undermine the levels of protection long afforded workers affected by federal transit assistance. Intensive lobbying by

organized labor and strong, negative testimony before the Surface Transportation Subcommittee of the House Committee on Public Works and Transportation in June, 1983, forced the DOL to withdraw the proposed guidelines.

Although attempts to change Section 13(c) legislatively or by regulation have not been successful, recent judicial decisions have had an impact. For example, a significant 13(c) decision was rendered in a U. S. District Court in February, 1984, concerning legislation enacted in Georgia in 1982. This legislation included a provision that made binding interest arbitration on wage levels optional, not mandatory, as was the case in previous 13(c) agreements between the Metropolitan Atlanta Rapid Transit Authority (MARTA) and the local labor union. The Georgia law also included certain management rights such as the right to hire part-time workers and to subcontract work. In this case, the ATU filed suit against the DOL, arguing that the legislation made it impossible for the DOL to issue a 13(c) certification that fair and equitable labor protections were in place. The court ruled that Congress "was fully aware that states and localities would be changing their laws regarding collective bargaining" and that 13(c) agreements may be changed over time depending on changes in state and local labor policy.

The importance of this case is that transit management now appears to have some of the guidance that was lacking in the DOL's rules and regulations. The legislation that was passed in Georgia, as well as legislation in Massachusetts and other states, is allowing transit management to regain control of labor practices and allowing state labor laws to prevail.

While Section 13(c) has been a significant barrier in some areas of the country, a survey of officials and operators in Onondaga, Westchester, and Suffolk Counties indicated that it has not been a factor in any of those areas, largely due to the use of the Model Agreement. More fundamentally, however, 13(c) has not negatively impacted U. S. transit systems generally because State and federal capital and operating assistance increased during the late 70's and early 80's. Now that the continuation, let alone growth of such funds, is problematic and transit authorities begin looking to preserve service in the least costly manner, contracting with private operators may receive more consideration and, hence, prompt more use of 13(c) protection.

It is the expressed goal of UMTA to terminate 13(c) in the 1986 Federal legislative session. UMTA is not including any labor protection provisions in its urban block grant legislative proposal.

2. Section 8(b)(1) - MPO Planning Process

Section 8(b)(1) of the UMT Act states that the urban transportation planning process is to be carried out by local officials acting through a metropolitan planning organization. Although the plans and programs required in the process are supposed to encourage the participation of the private sector to the maximum extent feasible, this participation has not occurred in areas where service is primarily provided by a municipality or public authority and will likely occur, only with a requirement to consider private operators when transit services are being planned.

Similarly, the private sector has not been directly involved in the development of the program of projects required by Section 9. That program has been developed by the designated recipient of Section 9 funds which must be a public body. The

private sector has been allowed to make comments on the content of the program of projects after it has been prepared. UMTA requires a designated recipient to modify the proposed program of projects if the comments received are deemed "appropriate".

UMTA has developed a policy which is intended to redress the failures of the local planning process to consider private operators as noted above. The policy has consultation and consideration elements. Private operators must be notified of proposed service opportunities, consulted on the Program of Projects, and participate in the development of the local Transportation Improvement Program. Further, when local planners propose new or significantly restructured services, private operators are to be considered for service provision, without subsidy if possible, with if necessary. Additionally, the policy requires a periodic review of existing services in order to ascertain whether private operators could provide the services more efficiently. The policy does not recognize local regulations or local labor contracts which prohibit contracting. On January 24, 1986, UMTA issued regulations detailing the documentation that MPO's and designated recipients must provide to indicate compliance with this policy.

This policy provides the framework for local consideration of private operators, yet gives sufficient latitude for local planners to structure a responsive local process. Representative local planning processes are reviewed in the three case studies.

3. Other Federal Regulations

Another barrier inhibiting private operators is that they cannot receive Section 3 or Section 9 assistance directly; they must be "sponsored" by a designated recipient. Such sponsorship necessitates local government administrative procedures and precludes private companies from becoming both the administrator and provider of local transit service, as is the case with most public transit authorities.

Federal transit assistance regulations also provide a minor disincentive to contracting for services with private operators if privately owned vehicles are to be used. The disincentive is the slightly greater requirement of local matching funds to federal operating assistance (50/50) to assist in paying the depreciation on the private sector vehicles than if the local government used federal capital assistance to simply purchase vehicles (which requires only a 20% - 25% local match) and then leased the vehicles to the private operator. In practice, both Suffolk and Westchester Counties have followed this latter procedure, as will be further discussed in the case studies. Since federal legislative proposals to redress the current lack of recognition of existing private sector capital have failed to secure sufficient support, UMTA is currently addressing the situation through a proposed modification of regulations.

Private operators receiving federal funding are subject to the same federal regulations as public operators. This includes reporting requirements which can absorb significant administrative effort. Public operators often have specific personnel assigned solely to compliance activities. For many private operators, however, a compliance administrator would be a significant extra cost. Onondaga County relieves the private operators of this burden by assigning government compliance responsibilities to a county employee. Examples of potentially burdensome paperwork include the reporting requirements of Section 15, Section 18, and, to a lesser degree, Section 16(b)(2).

Section 504 Regulations represent another potential barrier for the private sector. Since most private operators lack lift-equipped buses, local governments may choose not to contract with them for failure to meet the 504 requirements. This is especially true in areas that do not desire to operate a paratransit system. Similarly, private operators may have trouble complying with Minority Business Enterprise (MBE)/Disadvantaged Business Enterprise (DBE)/Women Business Enterprise (WBE) regulations. Inadequate compliance could mean the loss of federal funds.

Exemplifying a federal barrier to private operators that has been reduced is the use of revenue vehicle miles as one factor in apportioning Section 9 funds. Initially, areas that used private operators were only allowed to report the actual contracted mileage. Additional unsubsidized mileage provided by a private operator could not be submitted on a Section 15 report for Section 9 apportionment purposes. More recently, UMTA has allowed "non-contract" conventional transit services mileage to be reported. UMTA is also considering the future eligibility of airport and jitney mileage. Those favoring the proposal claim it would increase private participation, while those opposed claim it would take needed funds away from existing public operators.

## II. REVIEW OF STATE BARRIERS

The regulatory procedures required of private operators of public transportation services in New York are sufficiently complex as to require continuing administrative effort by either the operators or their municipal sponsors. However, the size of New York's operating assistance program and the proportionate participation of the private operators are such that New York must be considered supportive of private sector public transportation operations. The intent of the following three sections is to briefly explain New York's regulation of subsidies, fares, and profits; entry and exit; and safety and insurance. The perspective remains that of discovering and defining barriers to private sector provision of service.

### A. Maintenance of Service Through Provision of Subsidy and Regulation of Fares and Profits

A major objective of NYSDOT since 1974 has been the maintenance of an adequate level of public transportation service throughout the State at reasonable fare levels. The primary method of achieving this objective has been the State's operating subsidy program. While the State's objective prior to 1974 was similar, different means were used, sometimes with negative results.

State regulatory boards in general, New York's included, subjected private bus firms to extensive procedural requirements for route and fare changes in the 1950's and 1960's. Such requirements usually required the assistance of counsel and reflected a traditional perspective that, where the public was provided a service by a private firm with a geographic monopoly, government regulatory control was necessary for the public's protection. While the requested fare and route changes were generally granted, especially when unchallenged, such changes by themselves were inadequate to prevent the demise of many New York private bus firms in this period.

Rather than attempt to salvage these firms, New York opted to form public sector transportation authorities in its major urban areas in the late '60's and early '70's so as to preserve public transportation service. The enabling statutes of

these authorities permitted them to set fares and make route changes without approval of NYSDOT's Regulation Division, which had taken over regulation of bus firms from the PSC in 1971.

The owners of some private bus firms in New York welcomed the establishment of regional transportation authorities because it indicated that government funds would be used to buy up stock whose market value had drastically declined. Other bus firms resented the authorities out of family pride, i.e., they resisted being forced to sell a family business at what they perceived to be undervalued prices.

By 1974, the financial position of public transportation throughout the State had deteriorated to such an extent that the Legislature recognized that government aid was required to preserve service at affordable fare levels. Hence, the Legislature enacted a one-year operating assistance program. Both public and private operators were eligible to receive this assistance, although private firms could receive State money only if they were sponsored by a county or municipal government. In 1975, this State Transit Operating Assistance (TOA) Program was made permanent. Currently, TOA is the most important factor maintaining public transportation in New York State.

Private bus firms have three ways to qualify for TOA: a contract with a local government sponsor for a specific level of service, a contract with a local government sponsor to be a pass-through recipient of State assistance where the company establishes service levels, or a direct contract with the State. In the last case, NYSDOT writes contracts for specific levels of service with intercity bus operators serving two or more counties under Section 14-g of New York's Transportation Law.

Considering contracting for public transportation services, New York's Municipal Law requires state and local governments to solicit bids for goods and services obtained from the private sector when the dollar amount exceeds a specified threshold. Simultaneously, State Transportation Law requires that operators of bus lines have operating authority from NYSDOT's Regulatory Division to provide service in a particular market. It would thus appear that the Municipal Law prevents the State or a local sponsor from negotiating a service contract with an existing franchised operator. However, New York recognized that public transportation service had economic characteristics analogous to a public utility and, in Section 119-r of its Municipal Law, permitted municipalities to negotiate subsidized service contracts with the holders of existing operating authority without a bid process.

In practice, local governments in New York have honored the spirit of the municipal bidding law by seeking proposals for provision of new service from relevant and responsible operators. Selection of the provider was then made by choosing the proposal most advantageous to the local government. This procedure has been accepted by the State's attorney general and comptroller and, noting the infrequency of legal challenge, by most all the affected operators.

Such negotiated contracts may be preferred by both local governments and private operators because of the precedent of geographically based operating franchises held by these operators, the greater labor stability provided by multi-year labor contracts, and where relevant, long-term capital commitments. The probability that negotiated contracts cost more than bid contracts will be discussed in Chapter 3.

Suffolk and Westchester Counties negotiate essentially all of their contracts for scheduled service. Similarly, NYSDOT negotiates most of its 14-g intercity service contracts. However, in some circumstances where a franchised carrier desires to terminate a service, NYSDOT has invited other carriers to bid for the continued provision of the service. This process has generated some innovative service ideas and identified lower cost carriers in particular markets. Such a negotiated bid process could have utility for local governments wishing to establish new services through contracts with private operators or where the existing private operator has become complacent and may no longer offer the best service for the least cost. In this last case, the cooperation of NYSDOT's Regulation Division in changing operating authority among the affected private operators is necessary to facilitate the negotiation process.

State operating assistance is earned on a service (revenue vehicle miles) and usage (revenue passengers) formula. Based on the annual State appropriation, the Department establishes a formula specifying the amount earned per mile and per passenger. In calendar year 1986, the formula is 18¢/passenger and 47¢/vehicle mile. This formula is the same for each of the contract types mentioned above regardless of whether the subsidized service is local urban, local express, intercity, rural, or specialized service.

Payments are made to the carriers through municipal sponsors except for those intercity companies directly sponsored by the Department. Assistance is earned by the formula up to a company's fair rate of return cap. Every private operator providing over 100,000 revenue vehicle miles per year is limited by a regulated profit cap to preclude excess profits to subsidized firms. The cap has been based on an operating ratio of 94% or a 17% return on equity, whichever was greater, and included a company's total transportation business including charter and tour operations. In 1984, NYSDOT implemented a profit limitation methodology based on a percentage of revenues (6.38%) on line operations only. The alternative of a 17% return on equity, if greater, was retained.

In 1985, private operators in New York State received about $56.3 million in State operating assistance. The largest amounts were paid to the New York City local and express operators ($32 million) and Westchester County's system of private operators ($10 million). The share of State assistance paid from the State's general revenues, approximately 15%, requires an equal match by the local sponsor which is, in some cases, donated to the sponsor by the operator itself. The remaining State funds come from dedicated sources and do not have to be matched.

Notwithstanding the mechanisms developed to provide state operating assistance to private operators, TOA regulations limit private operator participation. In addition to requiring a Section 119-r contract with a local government, contracted services may be reviewed by NYSDOT for duplication of other subsidized services. In 1984, NYSDOT issued a policy restricting the eligibility for subsidy of commuter bus services operating in the same corridor as commuter rail. Furthermore, privately provided client, sightseeing, hotel, school, charter, or services authorized by the ICC after 11/19/82 without corresponding state authority are ineligible for TOA. Similarly, services provided in vehicles having a capacity of less than 15 passengers (8 in rural areas or for elderly and handicapped services) are ineligible for TOA; the latter sharply limits the use of taxis as public transportation providers in the State.

Currently, fares and total government assistance are roughly equal in importance in maintaining public transportation services. Private operators have been filing more frequent, incremental fare increase requests so as to maintain healthy farebox recovery ratios. In reviewing these requests, the Regulation Division considers projected farebox revenues, operating costs, and profit levels; projected local, state and federal operating assistance; the date of the previous rate increase; the nature of the service; and public notification. Most of the recent rate increase requests have been granted in full.

To date, New York's TOA Program has achieved its goal of maintaining adequate public transportation service at reasonable fares. Though the program came too late to save many private operators, since 1974 it has provided vital support to both public and private systems. While it is not an explicitly expressed State goal that the private sector be preserved as an active contributor to the State's needed public transportation service, the treatment of the private sector in the State's TOA Program demonstrates the State's commitment to continuing private sector participation.

B. State Regulation of Entry & Exit

Regulation of entry and exit was one of the methods alluded to in Section 1 above in use by New York's PSC prior to 1970 to maintain public transportation service on routes that were determined to be necessary, but which could not support themselves through farebox revenues. By protecting carriers from destructive competition on their profitable services, and by limiting the lucrative charter market to carriers with bus line authority, the PSC could the encourage these carriers to maintain service to unprofitable locales through cross-subsidy.

Numerous developments in public transportation since the late 1960's have reduced the effectiveness of this policy for preserving line service. First, a continuing decline in passengers, combined with only small fare increases in the late '60's and early '70's, meant that few services outside of charter and tours were profitable enough to be sources of cross-subsidies for the private operator. Second, rapid increases in fuel costs and upward pressures on labor rates resulting from generous settlements agreed to by public authorities in the early '70's meant that the operating costs of the private firms could no longer be covered by cross-subsidies. Third, where public authorities moved aggressively into the local charter and school transportation markets, the number of profitable services the private sector could provide was reduced. In some cases, public authorities also attempted to provide charters outside their mandated territory, but fortunately for the private operators, UMTA took specific steps to limit public operator access to this market in the mid-70's.

Finally, a decisive industry development negating the utility of cross-subsidies as a means of preserving service was the Federal bus deregulatory legislation of 1982. With the profitable interstate charter/tour market now open to all operators who could meet fitness criteria, existing operators could no longer depend on the receipt of profitable revenues from providing this service in their franchised areas.

Arising from regulatory reform philosophies analogous to those operating at the federal level, New York implemented regulatory policy changes resulting in a less restrictive entry policy on January 1, 1984. For established operators, less

restrictive entry regulations removed the assurance of profits from intrastate charter markets they had once considered exclusive. On the other hand, reduced entry requirements encouraged numerous new operators to offer service. Thus, whether the lowering of this barrier benefitted private operators depended on whether the operator was an established or new operator.

Once a private operator has secured a franchise for scheduled service, locational modification may be necessary to tailor routes to passenger needs. This has occurred frequently in Westchester and Suffolk where private operators providing local service under county contracts are requested by the counties to make changes. Even though such changes have only local importance, NYSDOT's Regulation Division retains its jurisdiction. In practice, Regulation usually follows the counties' wishes, so long as the requested changes do not create adverse public reaction. In New York City, state law requires the Regulation Division to cede its jurisdiction over private bus route changes to New York City's Bureau of Franchises. Regarding intercounty bus service, however, such as commuter express service from Westchester County to New York City, the Regulation Division retains its authority and maintains close scrutiny.

A further regulatory issue for private operators is permission to withdraw from unprofitable routes. For example, the Federal Bus Regulation Reform Act of 1982 facilitated abandonment to such an extent that many states, including New York, objected. This legislation enabled an ICC carrier that provided intrastate and interstate service on the same route whose abandonment request had been rejected by a State regulatory commission to appeal to the ICC for a reversal. Greyhound immediately sought to abandon weakly patronized routes in West Virginia, Illinois, and New York. New York challenged Greyhound's request, and after a number of public hearings, NYSDOT's Regulation Division rejected Greyhound's entire application. Simultaneously, however, NYSDOT proposed subsidies for those routes deemed necessary to the welfare of particular state regions. Greyhound accepted this as an interim solution.

Currently, therefore, NYSDOT's Regulation Division is flexible regarding entry to, modification of, and exit from service for private operators, particularly where the change is desired by local government. The intent is to encourage competition in determining service providers while ensuring adequate service where needed. Nevertheless, the operators must still demonstrate fitness and public need to obtain state authority. If no competing service exists in the area requested by the applicant operator, a temporary franchise can be granted immediately.

### C. State Safety Regulations

Safety regulations have four aspects applicable to private operators in New York: driver certification under Department of Motor Vehicle regulations; and the vehicle inspection, liability insurance, and operating standards requirements of NYSDOT.

Currently, both public and private bus operators must have individual driver files which include annual reports of traffic violations, a criminal records check, a record of a valid license, and an employment record for the previous three years. Additionally, a driver must pass physical and written examinations every two years and be observed and interviewed for good driving procedures annually. Operators may be audited by the Department of Motor Vehicles and penalized for noncompliance.

The second category of safety regulations concerns vehicle condition as determined by the semi-annual NYSDOT inspections. NYSDOT specifies detailed maintenance standards for vehicles authorized to carry passengers for hire in New York. However, locally regulated taxis and transit vehicles operated by a municipality or public authority are not subject to NYSDOT inspections, an exemption not available to private bus operators.

Third, NYSDOT's Regulation Division specifies minimum insurance levels for public transportation operators. Vehicles carrying up to 12 passengers must have liability coverage of $100,000 - $300,000. Vehicles carrying 13 or more passengers must have liability coverage of $100,000 - $500,000. As with vehicle inspection, public authorities are exempt from State insurance regulations and can therefore set their own liability limits. Private carriers must adhere to these minimums, however; and depending on such factors as industry trends, safety record, operating location, and quality of maintenance, premium costs may be a significant business expense. In 1986, the cost and availability of liability insurance is a major problem for public and private operators throughout the U. S. With all operators hoping the problem is short-lived, a number of temporary solutions are being tried, such as State-administered assigned risk pools and self-insurance.

Finally, NYSDOT's newly instituted Public Transportation Safety Board requires the submission of a safety plan detailing operational procedures for all public and private recipients of State operating assistance. This board determines the acceptability of each plan and then monitors compliance.

To sum up, New York's provisions for safety and insurance in public transportation do not apply equally to public and private sector operators. However, the only significant safety-related complaint of New York's private operators is directed not at discrimination in favor of public operators, but at standards significantly higher than other states. Retaliatory action by these other states is feared. Considering the welfare of New York's riding public, no relaxation of safety standards is proposed here.

## III. REVIEW OF LOCAL BARRIERS

### A. Local Regulations as Barriers

Prior to March 1, 1984, New York's Transportation Corporations Law gave municipalities the right to approve bus routes and to charge franchise fees on bus operations passing through their jurisdictions. In Onondaga County, for example, two successive operators of an airport shuttle had to secure permission to operate from both the Town of Salina, which borders the city-owned airport, and the City of Syracuse. In practice, NYSDOT issued only temporary authority pending the securing of local consents. The repeal of the Transportation Corporations Law in 1984 eliminates the local approval requirement, except for New York City.

Because of its size and complexity, New York City is subject to unique provisions of New York's Transportation Regulations and Transportation Corporations Law. New York City continues to mandate a local franchise process for service provided by private operators. At a minimum, this process requires 275 working days and, in practice, can take as long as two years. Consequently, even though the total private provision of service in New York City exceeds that of most U. S. complete systems, securing a new franchise from the city is an onerous process for a private operator.

## B. Other Local Barriers

Some public authority labor contracts prohibit contracting for services. For instance, the State "management rights" legislation enacted in Georgia in 1982 had among its provisions: "the right to determine whether goods or services, other than the operating of buses or rail vehicles, should be contracted for, leased, purchased, or otherwise acquired on either a permanent of temporary basis, provided that no employees of the Authority are laid off as a result of this subparagraph." In other words, while management regained control over other "inherent" rights, it still lacked the right to contract with private operators even if they could provide lower cost service.

Transportation authorities may also be constrained from contracting for vehicle maintenance. For example, Local 100 of the Transport Workers Union (TWU) sought to restrict the New York City Transit Authority's (NYCTA) "farming out" of work during its 1982 labor negotiations. An arbitration panel eventually decided that the NYCTA should give preference to its own employees for certain repairs provided the work was performed in existing facilities, without adding employees or conflicting with regular maintenance functions, and that the cost of such work was competitive with private firms in quality, price, and time of performance. In this case, management was able to maintain control.

Even when transportation authorities may contract for service or maintenance, private firms may not be available to provide the service needed. The many years of declining demand for bus service and the emphasis on public operation of the remaining routes have reduced the number of qualified local private operators. Additionally, local regulations have reduced the number of private providers in some locales. In the 1920's, many cities adopted regulations that prohibited jitneys. Less drastic local regulations still limit the number of private providers. For example, in many cities regulations have held the supply of taxi permits far below the demand for services in both exclusive ride and paratransit modes. Some of the strictest entry regulations are found in New York City, Boston, and Chicago.

Other factors which discourage private participation include lengthy bidding processes and short-term contracts. Local restrictions may limit a contract period to a year or less. Private operators in the three study areas showed a preference for longer contracts in order to justify capital expenditures and multi-year labor contracts. Municipalities in other states have found that short contract periods attract bids from too few operators. For instance, in the Danville, Illinois, Runaround project, few private operators bid on the service. The reason most often given was the extremely short contract period (four months). Two operators indicated that two-year contracts were necessary in order for them to bid.

The most difficult local barrier to overcome may be attitude. Many local officials question the ethics of providing profits to operators for services that require subsidies. This attitude is usually strongest in areas lacking private sector involvement. Local officials and private operators in the three study areas confirmed the existence of this attitude. One local official suggested that private operator profit and high company salary costs together eliminated any cost advantage of the private sector.

These barriers, as well as others found in the three study areas, will be developed more fully in the case studies.

## CHAPTER THREE -- SUMMARY OF NEW YORK CASE STUDIES

### I. Introduction

Chapter One noted that New York contained useful institutional models for contracting with private operators to provide public transportation service. Implementing this concept, the major contribution this study can make to the current national debate on the merits of privately provided public transportation is an analysis of three New York systems utilizing private operators, focusing on economic, institutional and labor issues. The detailed presentation of the three systems - Onondaga, Suffolk and Westchester counties - is in Appendices A-C. This chapter describes the analytical methodology used in the studies, describes findings from the three systems, and advances some general recommendations. While the original study objectives were to identify barriers to private operator participation in public transportation and suggest means of barrier reduction, the evolution of UMTA's privatization emphasis to a focus on competitively bid services makes relevant the additional consideration of necessary cautions when contracting with private operators. New York examples of the need for such cautions will be presented.

The objective of the case studies is to clarify the factors in each of the three counties that either support or inhibit the provision of public transportation service by private operators. The thesis proposed here is that the economic health of private sector public transportation depends on adequate federal and state subsidy programs combined with county governments positively oriented toward the private sector. Each of the three study sites, Onondaga, Westchester, and Suffolk, supports this thesis in a unique way.

In Onondaga County, most public transportation services are currently provided by the public authority, the Central New York Regional Transportation Authority (CNYRTA). CNYRTA furnishes local transit, elderly and handicapped transportation, commuter express busing, subscription busing, and fleet maintenance for itself and a few non-profit agencies. Additionally, a number of private carriers provide local transit, elderly and handicapped transportation, commuter busing, vanpools, taxis, and maintenance on their own vehicles. One private firm shares a new maintenance facility with CNYRTA. Some of these private carriers have both the potential and desire to expand operations.

In Westchester County, local transit including feeder service to the railroads is provided by the private sector under contract to the county using county owned vehicles. Elderly and handicapped service is provided by a private paratransit operator under contract to the county. Commuter express and airport services are operated by private carriers with their own vehicles. The commuter railroads are operated in the public sector. Subsidies are obtained from federal, state, and local sources and provide the private operators a regulated profit. Currently there is vigorous public commuter rail/private express bus competition for New York City commuters. Since commutation service requires considerable public assistance, subsidy and regulatory policy toward this competition is under extensive review by both the county and NYSDOT. To serve the widely dispersed worksites in the county itself, numerous vanpools, including vehicles owned by individuals, employers, and non-profit institutions, are utilized. This mode has potential for expansion.

In Suffolk County, commuter rail service, local service in the Town of Huntington, and seasonal service in two villages are publicly provided. Local transit service in the rest of the county is provided by private operators either under purchase of service contracts or through contracts with the county for pass-through of state subsidies. Most of the vehicles in transit service are county-owned and wheelchair accessible. Commuter express and airport services are provided by private carriers with their own vehicles. Similar to Westchester County, federal, state, and local subsidies ensure that the private carriers make a controlled profit.

## II. Case Study Analytical Methodology

The major information sources for the case studies include the following: reports and correspondence prepared for government agencies, studies prepared by consultants and academics, newspaper articles, and interviews with those knowledgeable concerning the local decision contexts. The government reports include applications for federal and state capital and operating assistance, applications for franchises, audit reports, and correspondence relating to these items. Consultants and academic studies include a dissertation on the evolution of CNYRTA, a consultant's evaluation of two years of Suffolk's operation, and a "blue ribbon panel" study of institutional arrangements for Westchester. Newspaper analysis included an extensive search of the New York Times regarding Suffolk and Westchester and a monitoring of the Syracuse daily papers. Finally, interviews were conducted in person and over the phone with representatives of state and county transportation departments, large and small private operators, county and local governments, state and local planning boards, chambers of commerce, unions, vehicle maintenance firms, and the legal profession.

In each case study, the development of the current system of transportation from approximately 1960 is outlined considering the role played by the private sector in the planning and legislative processes, the influence of capital investment policies, the influence of the federal and state operating assistance programs, consideration of the operating environment noting relevant local economic and political concerns, and the effect of changing federal and state regulatory policies. Following this presentation of current systems, the case studies consider the current barriers existing to additional private participation in the public transportation system and the possibilities for reducing or removing these barriers. The findings from the individual studies are presented below.

## III. Case Study Findings

### A. Onondaga

A high service output plus aggresive, skillful cultivation of support from federal, state, and county agencies has generated the necessary subsidies and approval for the public transportation services produced by the Central New York Regional Transportation Authority (CNYRTA). Having started operations in the public sector prior to federal and state programs which provided subsidies to public and private operators, CNYRTA developed an institutional momentum which excluded consideration of contracting with private operators for services. While external circumstances have required cooperation between CNYRTA and private operators in providing a limited number of services, CNYRTA believes it can provide public transportation as efficiently as private operators.

Parallel with CNYRTA's development, the federal, state, and county governments have provided legislation and operating and capital assistance facilitating the survival of those private operators in central New York who made an effort to stay in business. Evaluation of operating and financial performance of both public and private operators in central New York supports the continued existence of private firms but does not make a strong case for conversion of CNYRTA local services in Onondaga County to private operation.

This study postulates opportunities for increased private sector provision of local service in Cayuga and Oswego counties, commuter service in Onondaga County, local service in periods and places of low demand, elderly and handicapped service, airport shuttle service, and vanpools. For either the initiation or conversion of these services to the private sector, a number of steps are recommended.

The primary change necessary throughout New York to give private operators a greater role in provision of public transportation is for the five major regional transportation authorities, including to CNYRTA, to develop a new understanding of their role. Currently the authorities share the perception that not only should they plan, coordinate, and monitor services but also provide them through operating subsidiaries. The procedure now being implemented for some services by London (England) Regional Transport in which the transportation authority solicits bids for specific services from both public and private operators demonstrates that authorities need not be operators also. The bid award is made to the operator submitting the lowest cost for service of a specified quality and frequency. The London transportation authority ensures the provision of service without necessarily providing it itself; in other words it maintains an arms-length relationship with operators. From CNYRTA's perspective, however, economy of operation is only one policy objective, and not necessarily the primary one. Among other objections, CNYRTA staff feel that service quality would be difficult to maintain if services were contracted to private operators. This perspective is shared by other New York authorities. It remains problematic whether the twin Federal pressures of proposed operating assistance cuts and planning regulations requiring early participation of private operators and competitive bids for new or restructured services will induce greater use of private operators among New York's regional transportation authorities.

If New York's regional authorities, including CNYRTA, initiate competitive contracting for service, additional steps would facilitate private operator participation.

1. Periodic cost analyses of all public transportation services within the regional authorities' geographic jurisdictions.

2. Solicitation of bids for the highest cost services determined by (1) from both private and public operators. Such bids must be structured for an equitable comparison of private and public operators.

3. From (2) selection of most economical operator able to perform service of requisite quality.

4. Continued performance monitoring of public transportation by NYSDOT with dissemination of results among appropriate MPO's and transportation authorities.

5. Revision of New York's mortgage recording tax law so that all counties, including those desiring to terminate membership in a transportation authority could enact this tax to support transit service provided by locally selected operators.

6. Revision of New York's franchising procedures for private operators such that franchises for services contracted to municipal governments would be for the same duration as the purchase of service contracts.

7. Formation of regional private operator associations, particularly paratransit operators, for representation in the mandated MPO planning and service analysis process.

8. Close coordination with appropriate unions during policy formation and implementation to minimize:

   a. obstruction through aggressive implementation of federal 13(c) or New York's Taylor Law proceedings, or

   b. negative impacts on existing unionized workers.

CNYRTA and Onondaga County, as designated recipients, are expected to meet the requirements of UMTA's private sector participation regulations as currently stated. It seems likely, therefore, that if further private sector participation in public transportation is to occur in central New York, the economic analysis and legal policy changes suggested above will be necessary but not sufficient. The needed element, best summarized as initiative, will have to come from private operators realizing their mutual interest and promoting them at the local, county, and state levels. Currently, a combination of elements presents a mixed picture for additional private sector provision of public transportation in central New York. These include:

1. Some considerations of private sector provision of services by CNYRTA responding in part to federal initiatives.

2. A recent change in ownership of a major central New York private operator, possibly exacerbating relations with CNYRTA.

3. An expression of interest in providing service in central New York by firms based outside the area.

4. A continuing aggressive pursuit of opportunities by a number of paratransit firms.

5. A planned increase in State assistance to transit systems in 1987 through enhanced appropriations. This will mitigate pressure to raise fares and/or seek lower cost operators unless, of course, federal operating assistance is indeed terminated.

B. Suffolk

A key factor in Suffolk's decision to operate a public transportation system by contracting with private operators has been a conservative political philosophy which recognizes public needs but desires to minimize both the governmental

institutional structure and the necessary local financial support. Suffolk County legislators have rejected the institutional structures of the Metropolitan Suburban Bus Authority (MSBA) in neighboring Nassau County as too costly. Instead, Suffolk's system is operated with a minimal administrative staff. By contracting with a number of small to medium private operators who derive only a limited percentage of their total revenues from county public transportation services, the county secured the following advantages:

1. In 1980 an integrated system was implemented in a few months with existing vehicles and maintenance facilities.

2. The county currently provides transit service at significantly lower operating costs than the public systems in either Nassau County or Huntington, a populous Suffolk town.

3. The participating Suffolk private operators have recognized that the county's coordination of public transportation services has benefitted them financially and that they should not jeopardize this system by cost cutting injurious to public amenity. In fact, some operators have initiated new services even without county contracts. The prevailing cooperation among Suffolk's operators has permitted the county to operate the system with a minimal supervisory staff.

4. Suffolk County Operations (SCO) has achieved the farebox recovery ratio and ridership goals it originally established well within its projected time framework.

There are, of course, some problems, both actual and potential, with Suffolk's system.

1. The county has purchased a number of new transit vehicles which it has then leased to bus firms providing service for SCO and "pass-through" routes. Each of the county's vehicle purchases has come from a different manufacturer. Thus each of the private operators has a small but mixed transit fleet complicating maintenance procedures. Exacerbating this situation is the lack of an adequate maintenance monitoring program. The county is actively studying this problem in order that vehicle "down-time" be minimized.

2. The county has fallen behind in auditing operator financial records so as to complete payments owed for SCO services. One step taken to resolve this problem has been to change the basis of payment in recent contracts to revenue-miles of service as opposed to line item expenses.

3. Among the private operators under contract to the county, there is a wide variety in cash handling procedures. The county thus lacks assurance that all farebox revenues are handled with sufficient care. The planned installation of electronic fareboxes in all county-owned vehicles along with specific procedures for reading, emptying, and servicing these machines addresses this problem.

4. By a continued insistence on operating with only a minimal supervisory staff, Suffolk County may not be adequately monitoring the mechanical, cash handling, and financial recording procedures of its contractors as indicated in

#1-3 above. Though staff morale is currently high, excessive supervisory responsibilities can diminish its effectiveness and/or the overall performance of the transportation system.

5. Though one company now provides approximately 55% of SCO service, this operator has not sought political influence potentially counter to that of the county transportation department as in Westchester nor has the inflated cost structure of a monopoly provider yet developed. Although an operators' association has been formed, to date its concerns have been limited to exchange of technical information with little interest shown in county transportation policy. The county transportation department needs to remain alert to the disadvantages of monopoly service provision.

Finally, the following recommendations may assist Suffolk in maintaining the advantages it currently enjoys from a privately operated system.

1. Though the current economy and efficiency of Suffolk's public transportation service shows a positive comparison to state and national peers, periodic evaluations of service provision are needed to maintain this positive variation. A three-year evaluation cycle is suggested including the consideration of alternate modes and operators to ensure the most economic and efficient provision of service of appropriate quality. Among the alternate providers should be non-Suffolk operators interested in and capable of providing service.

2. Vigorous marketing, including solicitation among major employers, of vanpooling and express bus service appears to have potential for significant expansion especially considering the current rapid growth in office and manufacturing employment.

3. Contracts with profit incentives for economic, efficient, and effective performance have the potential of producing improved operational statistics. However, an incentive system would also require additional administrative effort to monitor the submitted data.

4. As many routes as possible should be brought into the Suffolk County Operations institutional structure as opposed to "pass through" routes so as to give the county increased flexibility in selecting the most efficient and economical operators and modes. This is suggested acknowledging the greater local financial support required of SCO services.

5. Closer monitoring of vehicle maintenance procedures among the operators leasing county vehicles is needed to ensure passenger amenity and maximum feasible vehicle life. Working toward uniformity of vehicle type in individual garages would assist the attainment of this objective.

6. The county transportation staff should be expanded slightly to prepare for the time when careful service monitoring will be necessary to ensure the service quality now supplied largely through cooperation and trust.

7. The conversion of the HART system to private operation could produce annual savings in local support of approximately $300,000. However, this will not take place until the local savings is considered more important than overcom-

ing the obstacles to this change that the current bus drivers are certain to present.

C. Westchester

Westchester currently offers essentially no opportunity for growth in the percentage of public transportation service provided by private operators but at the same time is a good example of opportunity for an increase in the provision of competitively bid services. The only service not provided by a private operator in Westchester is commuter rail. No private firm is apparenty interested in this service nor would New York State or the MTA willingly turn this service over to a private firm after investing $140 million plus in its rehabilitation. On the other hand Westchester has permitted the provision of local service to be dominated (85% of revenue vehicle miles, 96% of passengers (April-June, 1986)) by one operator. Both NYSDOT and the former Westchester Commissioner of Transportation have publicly acknowledged the negative aspects of such monopolistic service provision. However, the requisite combination of political initiative and opportunity to redress such monopoly provision does not exist at the State or county level. In fact this dominant provider took over additional local services on January 1, 1986, as the county Department of Transportation found the service of the previous operator, a small firm, unsatisfactory.

The two most obvious negative aspects of Westchester's monopolistic service provision are:

1. the higher cost per hour of service generated by Westchester's major private operator compared with national peer groups in 1983: $44.42 vs. $42.88.

2. the fact that the real estate affiliate of Westchester's major private operator will receive $46.8 million in lease costs over 20 years for the central maintenance facility whose construction cost was $17.4 million. Consequently, state and local assistance which would normally go into service provision will now simply enrich the major private operator.

The Westchester system, therefore, touted nationally in the early 1980's as demonstrating the greater operating efficiencies and cost economies of private over public operation, is now demonstrating that private monopolies generate costs comparable to public monopolies. This development was described in APTA media in the fall, 1985, by the Westchester Transportation Commissioner. While the definition of a problem is sometimes the first step in its solution, this is problematic in this case as the Transportation Commissioner recently resigned. Further, the current Westchester County Executive is campaigning for New York State Governor, an activity not conducive to thoughtful consideration of how to mitigate the disadvantages of monopoly transit service provision.

At the state level, the primary mechanism currently available to counteract monopoly service provision by private operators is the franchising authority of NYSDOT's Regulation Division. However, this agency has adopted the policy of following county preference for contractors of local service where the county guarantees coverage of service operating costs. This policy has proven efficacious in Suffolk. To be consistent, Regulation must act similarly in relation to Westchester where the disadvantages to this approach are evident.

It is therefore ironic to observe that, given the evolution of UMTA's privatization effort to an emphasis on competitive bidding, Westchester's system, though essentially completely privately operated, is as much in need of the application of competition to achieve cost economies and operational efficiencies as many publicly monopolized systems at which the new UMTA policy is nominally directed. For Westchester's system to regain the economy and efficiency for which it was known in the early '80's therefore may require the vigorous application of the new competitive bidding guidelines by UMTA itself.

## IV. General Findings/Recommendations

The following summarizes the major contributions this study makes to the current national discussion of the merits of private provision of public transportation service.

A. The Onondaga and Suffolk case studies are more relevant to the institutional arrangements found in other U.S. counties than the Westchester case study. In Onondaga an aggressive, medium-sized public transportation authority has developed the institutional support at the local, state, and federal levels necessary to maintain a comfortable autonomy in setting service policy. Simultaneously, the county government has through legislative and administrative action provided an institutional environment conducive to the continued operation of those private operators so interested. Suffolk County illustrates how a county-wide public transportation system can be established utilizing a minimum of local government staff provided that a number of private bus firms are currently in operation. In Westchester, the County has maintained an institutional environment conducive to private operators but has allowed a single operator to achieve a monopoly of service provision, a situation not recommended for replication.

B. New York systems, the case studies analyzed here as well as numerous other counties, illustrate the thesis that the County is the crucial government level in determining whether private or public operators will provide public transportation service. This concurs with Teal's finding that general purpose municipal governments are more likely to support public transportation service contracted with private operators than transit agencies. (1) Even when state legislation creates public transportation authorities, county legislators and administrators have a number of options available to support a private bus industry as Onondaga demonstrates. The weakness of the private bus industry in New York counties where no government support is provided illustrates the other side of this thesis.

C. Given B, the argument could be made that if counties guarantee the economic viability of local public transportation services, they should also be allowed to determine the fitness of local bus operators for serving the public and thus their right to hold a franchise for a service. On the other hand the current arrangement in Suffolk and Westchester in which the decision as to which operator will hold the contract for a subsidized service is made locally while fitness for service is determined by state agencies strikes a viable balance between local control and undue influence of local politics.

D. Monopoly private operators in Westchester and New York City on the one hand and the Suffolk system on the other illustrate the thesis that it is not privatization itself so much as competitive provision of service that

produces the best performance on economy and efficiency measures. If there is no competition for service provision, the cost structure of the monopolistic private operator tends to rise to that of the nearest monopolistic public operator, particularly if the same union represents both shops. This tendency for cost structures between nearby public and private operators to level upwards is reinforced to the extent that capital equipment is publicly provided. Where a private operator's capital is publicly provided, the entrepreneurial risk is diminished, thereby reducing the incentive for cost control. Where capital equipment is publicly provided and revenues for contracted service are guaranteed by local governments, private operators thus engaged are little more than management firms with minimal incentive for cost control.

E. If competition is to be reintroduced to the provision of public transportation service, a prerequisite will be for existing public transportation authorities to consider themselves as transportation brokers rather than transportation providers. Only as transportation authorities are willing to consider service proposals from both public and private operators on a periodically renewable basis will efforts at cost control be made by competing firms. Two cautionary notes are necessary here. Transportation authorities acting as brokers need to evaluate the fully allocated costs of public and private operators as equitably as possible. Unfortunately, there does not currently exist a commonly accepted methodology for such evaluations. Second, the service specifications for which a transportation authority solicits bids should include quality standards and penalties for non-compliance including contract termination.

F. New York's mortgage recording taxes are a useful revenue source for New York's transportation authorities. Based on new mortgages in the counties where this tax is in effect, this is a potentially useful revenue source for transit purposes for counties throughout New York and other states as well. A removal of the current limitations on this tax would allow it to be more generally useful for all New York counties.

G. UMTA Section 13(c) labor protection provisions have not so far acted as a barrier to private operator participation in public transportation in New York. Of greater concern is a part of New York's Civil Service Law, entitled the Taylor Law, which protects the "scope" of public sector bargaining units. To date the application of the Taylor Law to public transportation privatization efforts has not been tested legally.

H. Among the New York case studies evaluated here, only the small HART system in north west Suffolk County would on paper show a clearly positive financial change if federal operating assistance was terminated and the system put under private operation as in the rest of Suffolk County. This conclusion is based on the observation that HART's driver wages are currently approximately twice those prevailing among operators in the rest of the county. In central New York, CNYRTA's operating costs do not so clearly exceed those of local private operators that privatization by itself could make up for a termination of federal operating assistance. What is not known is the bid prices CNYRTA would receive if it solicited proposals for service provision from some of the national firms now interested in contracting local service.

The actual case studies comprise Appendices A-C in Volume II.

## FOOTNOTES FOR CHAPTER THREE

1. Teal, Roger F., "Transit Service Contracting: Experiences and Issues", (1985) in Transit Planning and Technology, Transportation Research Record 1036, Transportation Research Board, Washington, D.C., p. 30.

APPENDIX A -- ONONDAGA CASE STUDY

## I. HISTORICAL ORIGINS OF EXISTING PUBLIC TRANSPORTATION SERVICES

### A. PRIVATE FIRMS IN ONONDAGA--1960 - 1970

In 1960, public transportation in Onondaga County was provided by five local private bus companies. The largest of these, Syracuse Transit Corporation (STC), served Syracuse and its immediate suburbs. Syracuse and Oswego Motor Lines (S&O) operated intercounty service from Syracuse to Fulton and Oswego in Oswego County. Onondaga Coach ran intercounty service from Syracuse to Auburn. Syracuse and Eastern (S&E) ran intracounty service from Syracuse to the suburban village of Manlius. Central New York Coach operated intercounty service from Syracuse to Rome and Utica. The last three companies had a common corporate structure. Additionally, Onondaga was served by Greyhound, which provided limited service to rural villages as well as long-distance intercity service.

Between 1960 and 1971, STC's ridership halved from 18 million to 9 million annually. During this time, Onondaga's population was dispersing to the suburbs aided by low gasoline prices and interstate highway construction. STC attempted to adjust its service to meet these demographic shifts. Routes were extended into the developing suburbs. Frequent requests for route changes were brought to New York's Public Service commission (PSC). Two strategies STC's management neglected were fare adjustments and charter promotion. STC's base fare remained constant between 1964 and 1969. The only charters STC served had local destinations. In its applications for franchise modifications before the PSC, STC avoided competing for charters with Onondaga's other private operators.

As the 1960's progressed, STC's operating costs grew steadily, largely due to gradually increasing labor rates. STC's declining revenues and increasing costs foreshadowed the need for significant changes in management procedures and/or subsidies.

Meanwhile, Onondaga's other private operators survived on a more balanced mix of line and charter operations. The predominantly rural routes of these operators produced lower passenger turnover relative to STC, but fares increased with distance. All the private operators generated inadequate farebox revenue to replace vehicles.

### B. EARLY YEARS OF CNYRTA

Given this background, the precipitating factor in the demise of STC was a driver's strike in 1969 during the Christmas shopping period. Downtown Syracuse merchants, hurt by a serious drop in patronage, appealed to their state senator for action.

This senator was uniquely qualified to understand STC's operation and provide appropriate legislative remedies. He held stock in STC, and his law office acted as counsel to the bus firm. His long service in the New York Senate had resulted in key committee assignments and a successful legislative record.

This background adds interest to the senator's response to the merchant's appeal: the formation of a regional public transportation authority. State legislation establishing similar institutions in four of New York's metropolitan areas had already been enacted. The interest lies in the fact that this institution, entitled the Central New York Regional Transportation Authority (CNYRTA), was authorized to receive federal funds for purchasing private bus firms.

In retrospect, a major factor in the conversion of Onondaga's privately operated public transportation system to public operation was the desire of STC's stockholders to retrieve their investments, rather than to continue as a transportation operation in a declining market. This contrasts, as will be shown, with Westchester and Suffolk, where private bus operators had a strong desire to continue their own operations.

With the benefit of hindsight and considering the examples of Suffolk and Westchester, public transportation's primary need in Onondaga in 1971 was not an institutional change, but rather a mechanism to secure subsidies for continued service. However, this perspective had no support in Onondaga at the time; and, therefore, the purchase of STC was considered necessary.

## C. COMPETITION BETWEEN CNYRTA AND PRIVATE BUS FIRMS

Following the decision to purchase STC, CNYRTA made a number of attempts to take over the operations of the remaining private bus companies in its three member counties: Onondaga, Oswego, and Cayuga. For example, in 1973 CNYRTA offered competing service to S&E on the east side of Syracuse and to Auburn Transit in Cayuga County. These two companies, under common ownership, terminated operations.

CNYRTA's expansive efforts led the Onondaga County government to support the private bus industry legislatively. In November, 1973, a resolution was passed prohibiting "Centro from duplicating existing services provided by independently owned carriers or from providing service to the same area or route being adequately served by independently owned carriers." (Case #28835-NYSDOT Regulation Division) In fairness, it should be noted that CNYRTA had turned down a local politician's request for service to another Syracuse suburb because it was in the franchised territory of an existing private carrier, S&O.

The restrictions on service area imposed by the Onondaga County Legislature notwithstanding, CNYRTA continued primarily to compete rather than cooperate with the remaining private bus firms. While Auburn Transit and S&E had ceased operations in the face of CNYRTA competition, S&O, Onondaga Coach, and Central New York Coach resisted incursions into their franchised territories and challenges to their charter market.

S&O's resistance to CNYRTA's competitively scheduled service along S&O's franchised routes brought mixed results. This was partly due to S&O's franchise being regulated by NYSDOT while CNYRTA, whose district encompassed S&O's franchise and more, was exempt from NYSDOT regulation. On one route, limited S&O service was completely replaced by more frequent CNYRTA service. In another corridor, a bitter struggle finally resulted in complementary service by both carriers.

Pressure for an S&O sellout to CNYRTA was exerted a number of times in the middle '70's. Though S&O's financial difficulties were occasionally severe, this pressure was successfully resisted. As will be noted later, State operating assistance (TOA), support from the county government, and a good charter business ameliorated these financial problems.

The dispute over charter rights between CNYRTA and S&O which began in the early 1970's continues unresolved to the present. Onondaga Coach and Central New York Coach have joined S&O in this dispute. A brief history of the disagreement is relevant here. From January, 1972 to May, 1974, when TOA became available, CNYRTA had difficulty securing adequate operating revenues. With the purchase of STC, CNYRTA therefore began exercising the statewide charter rights STC had held. Realistically, however, the vehicles CNYRTA had bought from STC were unattractive for charter use. When CNYRTA acquired new vehicles in 1973-74 with state and federal assistance, S&O perceived that their one profitable market, charters, was threatened. From S&O's perspective, it was ironic that the federal taxes they paid helped purchase vehicles for their public sector competitor.

However, the federal government did recognize the interests of private operators in its bus grant procedures. Recipients of federally funded vehicles could use these vehicles in charter service only on an incidental basis, that is, outside of peak hours and to destinations that were no more than 55 miles from the boundaries of authority districts.

Even though its operating revenues and capital equipment were assured through state and federal assistance from 1974 on, CNYRTA continued to seek legal authority to run charters outside its three-county district. CNYRTA received favorable rulings from New York's Attorney General in 1974 and 1981 on this question but failed to get the changes in state legislation it requested and was cautioned twice by NYSDOT Commissioners about its competitive tactics in the charter market. Currently, CNYRTA has implemented the favorable Attorney General rulings by signing joint service agreement with two non-member counties so as to provide intercounty charter service. S&O, Central New York Coach, and Onondaga Coach have challenged the legality of these agreements.

The preceding narrative has implied that the major public-private competition in Onondaga was between CNYRTA and S&O. This is correct, but Central New York Coach and Onondaga Coach also managed to remain in operation using the same sources of support as S&O: charters, state and federal operating assistance, and financial and administrative support from the Onondaga County government.

The preceding narrative also suggests that relations between CNYRTA and private operators had little chance of becoming cooperative. However, with both CNYRTA and S&O needing new maintenance facilities by the mid-1970's, an opportunity arose for the county government and the Syracuse MPO to encourage CNYRTA and S&O to cooperate. S&O was initially reluctant, but local officials realized that both capital resources could be more efficiently utilized and a good comparison provided if public and private operations were housed in the same facility. This decision proved correct for a couple of years. However, now that S&O has been sold, not to CNYRTA but to a former CNYRTA administrator, the cooperation has deteriorated. S&O is currently looking for its own facility.

This joint use of a central maintenance facility and the use of taxis for supplemental E&H service as outlined in Chapter 2 are the major examples of CNYRTA's cooperation with the private sector. Beyond this, CNYRTA remains reluctant to contract with the private sector for transportation services. CNYRTA's perspective is that it can provide service as economically as any private provider. This perspective is discussed subsequently in this appendix under "Barriers to Privates Providing Services".

## D. LOCAL GOVERNMENT'S ROLE IN PUBLIC TRANSPORTATION IN ONONDAGA

While STC was still operating, the City of Syracuse, acting under New York's Public Service Commission (PSC) regulations, approved route and service changes. Subsequent to CNYRTA assuming STC operations, however, the City has exercised only a nominal role in both public and private bus operations. Initially opposed to the formation of CNYRTA out of fear of a takeover of the profitable city airport, the City reversed itself and provided CNYRTA with operating subsidies for one year. Subsequent City financial problems terminated this contribution. Currently, the City's involvement in public transportation is limited to regulation of taxis and airport ground transportation and representation on CNYRTA's Board of Directors.

The termination of the City's subsidy for local public transportation was not unique to Syracuse. No major upstate city in New York has taken an active financial or policy role in its local public transportation system. In fact, the State's TOA program tacitly supports this lack of participation by mandating local matching funds from county, not city, governments.

Onondaga's county government has taken an active role in public transportation, certainly since CNYRTA's formation in 1970. Almost alone among the upstate counties belonging to transportation authorities, Onondaga has assisted private operators along with its support of CNYRTA. In 1971, the County helped S&O secure new equipment by acting as the designated recipient for federal and state capital grants. For this purchase, S&O provided local match. In 1973, as noted above, the County set geographic limits on CNYRTA's proposals to expand services relative to the franchised routes of the private operators. In 1974, the County began sponsoring those private firms participating in the State's TOA program. Since the program was enacted too late in the fiscal year to be included in the County budget, Onondaga participated in the State's interest-free loans for the first year's local share of operating assistance for both the private bus firms and CNYRTA. Subsequently, Onondaga has been one of the few New York counties to provide the mandated local match from local tax revenues instead of requiring the companies themselves to advance the money.

## E. THE ROLE OF PLANNING ORGANIZATIONS IN ONONDAGA'S PUBLIC TRANSPORTATION

In Onondaga's public/private decision context the Syracuse Metropolitan Transportation Council (SMTC), the Metropolitan Planning Organization (MPO) for Central New York, has usually favored service provision by CNYRTA in the jurisdictional disputes noted earlier. This preference was based on the greater levels of service proposed by CNYRTA. SMTC did not ignore the private operators, however. For example, service and route changes were proposed for S&O. However, S&O's management either perceived the changes to be unacceptable, e.g., required relinquishing a segment of a long-held franchised route, or gave them only a brief trial period. Most of these changes were thus never implemented.

The other two major efforts of the MPO were the coordination of elderly and handicapped services receiving federal and state funding and the promotion of ride-sharing. The first effort had limited success, both because federal funding regulations often precluded coordination among recipient agencies and because the agencies themselves frequently resisted coordination. However, SMTC persuaded PEACE, an emergency relief organization; MCOA, a service organization for the elderly; and the local cerebral palsy unit to have CNYRTA provide their transportation. Promotional efforts supporting ride-sharing achieved little success due to abundant gasoline, infrequent congestion, lack of employer sponsorship, and adequate parking facilities.

### F. CURRENT LEVEL OF PRIVATE SECTOR PARTICIPATION IN LINE SERVICE IN CENTRAL NEW YORK

Table 1 presents some financial and operating statistics, indicating the share of private sector participation in line service in central New York. Oswego and Cayuga Counties are included since, along with Onondaga, they comprise the total service area of CNYRTA and also Onondaga Coach and S&O, two of the three major local private operators serving central New York. The services of Onondaga Coach and S&O are in largely rural areas with low passenger turnover, high mileage, and graduated zone fares. Centro services are in more densely populated areas with higher passenger turnover, low mileages, and flat fares. This explains the low passenger percentage and relatively high revenue-hour and revenue-mile percentages of the private operators.

## II. ANALYSIS OF CURRENT FUNDING AND REGULATORY PROCEDURES

### A. INFLUENCE OF CAPITAL FUNDING POLICIES ON PRIVATE SECTOR INVOLVEMENT

Large scale fixed (i.e., rail) capital investment in public transportation does not play the significant role in Onondaga that it does in Westchester and, to a lesser extent, in Suffolk. Though local politicians and CNYRTA have proposed commutation from northern and western suburbs by self-propelled rail cars on existing rail lines, nothing has progressed beyond the conceptual stage.

CNYRTA's policies toward working with private operators have generally reflected the federal policies on capital assistance as noted in Chapter 2. Federal funds for capital equipment and facilities were abundantly available from the middle 1970's to the early 1980's. The 80% federal, 20% local share generally applicable to purchases of capital equipment, as opposed to the 50/50 split for federal operating assistance, prompted transportation authorities to establish operating subsidiaries rather than provide operating assistance to or contract with private operators.

In theory, CNYRTA could have followed a procedure similar to Westchester and Suffolk using assistance to secure capital equipment which would then be leased to private operators. However, such an arrangement between a transportation authority and private operators was unprecedented in New York in 1971 and was not favored by either CNYRTA or central New York private operators. CNYRTA was primarily concerned with the survival of its operating subsidiaries. The local private operators did not trust their public sector competitor to handle their applications for federal assistance. Fortunately for the private operators, Onondaga's

TABLE A-1

CURRENT PRIVATE PARTICIPATION IN LINE SERVICE IN CENTRAL NEW YORK:

ONONDAGA, OSWEGO, AND CAYUGA COUNTIES

| | CNY[1] Centro | Centro[1] Oswego | Centro[1] Cayuga | Onondaga[2] Coach | S&O[2] | Total | Total Privates | % Privates |
|---|---|---|---|---|---|---|---|---|
| Revenues | 5,149,556 | 122,308 | 270,088 | 295,436 | 603,950 | 6,441,418 | 899,386 | 14.0 |
| Expenses | 12,421,366 | 492,369 | 651,969 | 449,826 | 1,049,878 | 15,065,408 | 1,499,704 | 10.0 |
| Passengers | 11,790,117 | 585,870 | 527,991 | 172,993 | 578,934 | 13,655,905 | 751,927 | 5.5 |
| Revenue-Hours | 324,732 | 20,445 | 23,796 | 15,967 | 27,162 | 412,102 | 43,129 | 10.5 |
| Revenue-Miles | 3,855,219 | 317,148 | 460,739 | 333,957 | 597,362 | 5,564,425 | 931,319 | 16.7 |

[1] State Fiscal Year 1983-84

[2] Calendar Year 1983

county government provided the necessary administrative assistance. Such administrative assistance was uncommon, certainly in upstate New York where, for example, Erie County (Buffalo) and Albany County (Albany) ignored the needs of private operators.

B. INFLUENCE OF FEDERAL AND STATE OPERATING ASSISTANCE PROGRAMS

Table 2 indicates the role Federal and state operating assistance are currently playing in scheduled bus operations in central New York. Considering Federal aid, in central New York the loss of such aid as proposed by the Reagan Administration would impact most of the CNYRTA subsidiaries, particularly those in Cayuga and Oswego Counties where federal assistance was almost 20% of the 1983-84 operating budgets. Private operators would be less severely impacted.

For both public and private operators, however, state operating assistance plays a significantly greater role than federal assistance. Since its 1974 inception, New York's TOA program has provided the large public operators somewhat greater assurance in budgeting than the private operators. The large public operators each receive a line item appropriation in New York's annual budget, while the amount the private operators receive is governed by a formula utilizing revenue miles and passengers. In practice, however, this apparent inequity tends to diminish for two reasons. First, the amount the public operators receive from their line appropriation is not significantly different than what they would have earned under the formula used to calculate private operator subsidies. Second, if reductions in state operating assistance are necessary due to shortfalls in tax revenue, both private and public operators receive less subsidy.

Finally, it is interesting to note that combining the percentages of state and federal aid for public and private operators in central New York produces total percentage subsidy figures with only a 5% range difference. Considering total operating expenses, both the public and private operators in central New York expect to cover just over 50% of their operating expenses from the farebox and other local subsidies.

C. EFFECT OF CHANGING REGULATORY ENVIRONMENT

Actions to deregulate the bus industry at both the federal and state levels have encouraged bus firms not previously operating in Onondaga to offer services to this area. For example, Blue Bird Coach Lines of Olean, New York and A.R.A. Services of Philadelphia are now offering charters and tours out of Syracuse. A.R.A. has subsequently been purchased by Laidlaw of Canada. Blue Bird was also interested in the Syracuse University circulation service currently operated by CNY-Centro.

## III. EVALUATE BARRIERS TO PRIVATE SECTOR INVOLVEMENT AND ASSESS HOW BARRIERS CAN BE ELIMINATED OR REDUCED

A. POTENTIAL PRIVATE SECTOR ROLES

The services either currently not provided or provided by CNYRTA and feasible for provision by the private sector include local service in Cayuga and Oswego if these counties opt out of CNYRTA, commuter runs during peak hours, local service during periods of low demand, elderly and handicapped service, airport to CBD shuttle service, and commuter vanpools.

TABLE A-2

ROLE OF FEDERAL AND STATE AID IN OPERATING BUDGETS OF CENTRAL NEW YORK

PUBLIC AND PRIVATE OPERATORS--1983 ACTUALS

| Operator | Total Expenses | Federal Aid | % of Operating Expenses | State Aid | % of Operating Expenses | Federal/ State Aid as % of Operating Expenses |
|---|---|---|---|---|---|---|
| CNY-Centro | 12,422,971[1] | 1,610,911 | 13.0 | 4,367,665 | 35.1 | 48.1 |
| Centro-Oswego | 492,369[1] | 93,623 | 19.0 | 145,125 | 29.5 | 48.5 |
| Centro-Cayuga | 653,184[1] | 129,618 | 19.8 | 172.860 | 26.5 | 46.3 |
| Onondaga Coach | 449,826[2] | 36,588 | 8.1 | 184,777 | 41.4 | 49.2 |
| S&O Coach | 1,049,878[2] | 127,965 | 12.2 | 333,635 | 31.8 | 44.0 |

[1] 1983-84 State Fiscal Year

[2] 1983 Calendar Year--Statistics adjusted to correspond with CNYRTA statistics.

The example of Johnson County, Kansas, cited in Chapter 2 illustrates a suburban county opting out of a regional transportation authority in an effort to provide more economical and responsive service. Just as the process has not been trouble-free in Kansas, a brief analysis in the barrier section will indicate that the savings to Cayuga and Oswego would be minimal considering the effort required.

Examples from Chicago, Washington, New York City, and Los Angeles indicate that private firms can often operate commuter services at either a profit or with lower subsidy needs than public operators. Public operators often fail to recognize that peak hour services, particularly to the suburbs, are very costly. The prevailing perception is that full buses are making money. The extra costs often overlooked include the spread-time penalties paid to full-time drivers, the slower vehicle speeds of peak hour operation, the lower passenger turnover rate on commuter runs as compared with inner-city runs (exacerbated when flat, rather than zone fares, are used), high deadhead mileage, and the costs of acquiring and maintaining vehicles used only during peak hours. By contrast, private operators utilize more part-time drivers, often pay lower wages, and frequently operate lower cost vehicles. It is suggested that CNYRTA analyze the costs of its peak hour commuter service and then request bids for high cost runs. A comparison of bids with CNYRTA costs would determine the most economical provider.

Local service in areas and periods of low demand might also be privately provided. The substitute service operated on Sundays and in areas of new development in Phoenix, Arizona, by a taxi operator could be relevant to Onondaga. Onondaga has a sizable taxi fleet largely based in Syracuse. Many of the cabs are owner operated and pay for dispatching service on an "as used" basis. There are also numerous paratransit van operators in Onondaga. CNYRTA could contract service in areas and periods of low demand to private operators using either a jitney mode on CNY-Centro routes or a shared-ride taxi mode in more generally delineated service areas. As above, an examination of bids after analyzing its own fully allocated costs would indicated to CNYRTA if substitution of privately provided service would be worth a trial period.

Another candidate for private provision in Onondaga is elderly and handicapped (E & H) transportation. Counting the existing paratransit operators, there appears to be enough private firms in Onondaga to handle most of the demand. CNYRTA already contracts approximately 12,000 trips for ambulatory E & H patrons annually to taxi firms at savings of up to $2/trip over in-house operations. Additionally, it has a cooperative working relationship with a non-profit agency providing wheelchair service. Unfortunately, comparisons of fully allocated costs between CNYRTA and private wheelchair services are not available but could be evaluated in the same manner as indicated above.

Parenthetically, the policy of the Rochester-Genesee Regional Transportation Authority (RGRTA), west of Syracuse, is moving away from private provision. Wheelchair service formerly provided by a private operator under contract to RGRTA has been incorporated in the authority's operations. This change resulted from an analysis of both service quality and operating costs of public and private providers.

There is not a high demand for airport to CBD shuttle service in Onondaga. However, considering the development effort which Syracuse has put into its international airport, it is surprising to note how the city has neglected public

transportation access to this facility. Access by private car has been enhanced with a new covered parking area. Rental cars are readily available. Taxis are also readily available, but not always predictably priced. However, an airport shuttle service has not been available for over two years. CNYRTA is willing to provide transit service to the airport so long as the additional deficits are subsidized. The Syracuse Chamber of Commerce has actively sought out new private operators for an airport shuttle service but without success. Key elements for the success of an airport shuttle are the neutralization of taxi operator obstruction, a ground transportation information office open when flights are operating, and a guarantee of cost coverage for at least the first months of operation.

The final public transportation service potentially expansible in Onondaga is commuter van pools. While peak hour road congestion in Onondaga is not serious, more extensive use of van pools would ease parking availability in the CBD, reduce costs for individual commuters, and make a contribution to fuel conservation.

Though operations larger than CNYRTA are privately operated in other parts of New York, this study suggests that a reversion of local service in Onondaga to private operation is not practical for a number of reasons. First, as will be shown subsequently, there is little evidence indicating that existing central New York private operators could provide this service with greater economy, efficiency, and effectiveness. Second, no effective sentiment exists at the state or local levels to transfer local transit service from existing regional transportation authorities to private operators. Third, though the Amalgamated Transit Union (ATU) has organized both CNY-Centro and S&O, the union will vigorously oppose privatization efforts. Fourth, no private operator of the requisite size and competence has indicated a desire to operate the system. Therefore, the emphasis here is that private operators could perform some of the peripheral services noted above at less total cost to the public than CNYRTA.

## B. BARRIERS TO PRIVATES PROVIDING SERVICES IN ONONDAGA

Given the above opportunities, what is preventing private operators from fuller participation in these roles? This subject is considered in two parts: private sector participation in central New York's transportation planning process and the barriers inhibiting participation in specific roles.

### 1. Private Operator Participation in the Planning Process

Prior to 1986, the federally-mandated MPO planning process lacked specific regulations requiring inclusion of local private operators in the planning of new services. As will be discussed subsequently, UMTA is currently implementing changes to its regulations which would require private operator input to planning procedures.

In Onondaga, the local private bus operators have indicated satisfaction with their participation in SMTC, the central New York MPO. These operators, S&O, Onondaga Coach, and Central New York Coach, are fully conscious of CNYRTA's dominance in the MPO process, but are confident that their interests are adequately represented by the Onondaga County government representative on SMTC. A number of paratransit and intercity operators, however, feel excluded from the local transportation planning process, particularly where it involves services they feel they could provide more economically than CNYRTA. Since SMTC did not develop a

privatization policy prior to 1986, the policy initiatives of CNYRTA, which historically have involved the private sector only minimally, have seldom been challenged on the grounds of exclusion of private operators.

2. Barriers to Private Provision of Specific Services

As has been suggested above, local service provided by private operator is a more likely possibility in Cayuga and Oswego than in Onondaga. Even in these two counties, however, significant economic and legal barriers exist.

The statistics displayed in Table A-3 are relevant to the provision of local and commuter service by private operators. They are derived from statistics required by NYSDOT regulations. Adjustments have been made to the private sector figures to make them comparable to public operations, but the reader is cautioned to treat this table as indicative rather than definitive.

Considering this caveat, for Oswego and Cayuga to opt out of CNYRTA and provide local service under contract with private operators, the comparative operating costs would have to be much better than shown on Table A-3. In this table, the closest comparisons, considering demographics of service area, are between Centro-Oswego and S&O, and between Centro-Cayuga and Onondaga Coach. Even these services are not directly comparable, however, as Centro-Oswego and Centro-Cayuga run schedules that provide local service in small county seats, while Onondaga Coach and S&O run intercounty services through rural areas. CNY-Centro figures have been included to demonstrate that, though costly, public sector local service in Onondaga is significantly more effective than local private operators. The comparatively high cost figures of the private operators are somewhat surprising given their lower wage scales. Two factors boosting private sector costs are profits and taxes. Insurance costs for all operators have escalated sharply but more recently than shown in the table. These figures give some credence to CNYRTA's assertion that it can produce service as economically as private operators.

Analyzing the legal barriers to opting out in Central New York, CNYRTA's enabling legislation permitted Oswego and Cayuga to join while mandating Onondaga's membership. Therefore, it would be easier for these two counties to terminate their membership than Onondaga. However, since termination by a member county has not occurred in any New York transportation district, the ease of such a termination is unknown. It can be assumed, however, CNYRTA would resist such a termination at least until unamortized capital commitments such as garage facilities were satisfied. As has been implied, for Onondaga to opt out of CNYRTA is unlikely and would require an act of the State legislature. Thus, the utility of the opt out concept for Central New York counties may lie more in its potential to exert pressure on CNYRTA for service modifications than in any monetary savings.

Analyzing the barriers to contracting for private provision of commuter express service, resistance can be expected from both the Amalgamated Transit Union (ATU) which represents Centro drivers and, to some extent, from CNYRTA itself. ATU resistance can be expected to any projects which decrease the size of its bargaining units. By using Section 13(c) of the UMT Act, ATU can block receipt of federal assistance if CNYRTA plans to reduce staff through contracting. ATU currently opposes any staff reduction, even through attrition. In a shift from previous attitudes, CNYRTA is considering contracting some commuter service. This

is in response to high salary demands of unionized drivers and federal pressure for competitive bidding. Progress toward contracted service has been slowed by deteriorating relations with S&O, however.

TABLE A-3

MEASURES OF ECONOMY AND EFFECTIVENESS AMONG CENTRAL NEW YORK PUBLIC AND PRIVATE OPERATORS

| Operator | Operating Cost/Mile | Operating Cost/Hour | Passengers/ Revenue Hour | Passengers/ Revenue Mile |
|---|---|---|---|---|
| CNY-Centro | $3.22 | $38.26 | $36.3 | 3.1 |
| Centro-Oswego | 1.55 | 24.08 | 28.7 | 1.8 |
| Centro-Cayuga | 1.42 | 27.40 | 22.2 | 1.1 |
| Onondaga Coach | 1.35 | 28.17 | 10.8 | .52 |
| S&O | 1.76 | 38.65 | 21.3 | .97 |

[1] Actuals for 1983-84 State Fiscal Year

[2] Actuals for 1983 Calendar Year

Union resistance can also be expected if CNYRTA considers contracting with either taxi or van operations for low-demand service. While Centro's drivers are prohibited from striking under New York's Taylor Law, the blockage of federal funds under Section 13(c) is still available. Conversely, New York's Taylor Law also prevents a State agency such as CNYRTA from laying off current workers and contracting their work to a private firm.

There would be additional regulatory considerations if CNYRTA was to contract with van or taxi operators. If taxis were proposed to carry multiple parties to multiple destinations, Syracuse's taxi ordinances would have to be changed to permit shared rides. Given the existing attitude toward taxi operations of Syracuse's Common Council, such a change is only conceivable with CNYRTA support, and even then is not certain.

If CNYRTA contracted with a van operator, NYSDOT's Regulatory Division would have jurisdiction over vehicle condition and insurance coverage, as has been described in Chapter 2. With the exception of insurance, whose costs for all operators have recently increased dramatically as noted above, NYSDOT requirements have not proven onerous for responsible New York private operators. NYSDOT has no authority over local taxi operations.

Parenthetically, though CNYRTA would not lose any operating assistance from New York State by contracting with taxis, NYSDOT's operating assistance regulations prohibit private operators or small municipal systems from receiving TOA for

service provided with vehicles of less than eight passenger capacity. This would discourage the use of taxis for E & H work or transit service in low demand periods.

Considering ground access service to Syracuse's airport, the barriers to privately provided shuttle service are the lack of enforcement of ground transportation regulations and the lack of an operating subsidy. The Syracuse Police Department and Common Council share responsibility for these functions. The enforcement of regulations would ensure that passengers secured the ground access mode they desired and that operators of one mode did not harass operators of another mode. Subsidies would be necessary until the shuttle service secured a steady revenue base.

The two major barriers to increased vanpool usage in Onondaga are indifference by major employers and the perception by CNYRTA that vanpool promotion would reduce ridership on transit vehicles. A few major employers in Onondaga encourage vanpools by assisting with the initial capital investing, in-house promotional efforts, and/or preferential parking. Most employers, however, limit their concern for employee commutation to parking lot construction and maintenance and occasional bus shelters. Though it is not common for transit authorities to promote vanpooling, the transit authority in Lexington, Kentucky, does so successfully.

## C. PROPOSED MEANS OF BARRIERS REDUCTION OR ELIMINATION

### 1. Federal

A number of steps could be taken by federal, state, and local government agencies to reduce the barriers to private provision of public transportation noted above. Additionally, private operators need to exercise certain initiatives to increase their involvement. The most important consideration from a government perspective, however, particularly NYSDOT, is that the most economical, efficient, and effective service be provided for the public funds expended. This means that the reversion of service currently provided in the public sector to private operators should be undertaken only after financial and service quality analyses of individual situations.

At the federal level, UMTA issued a Notice of Policy on October 22, 1984, stating that "when developing federally assisted transportation plans and programs, UMTA grantees should give timely and fair consideration to the comments and proposals of interested private enterprise entities in order to achieve maximum feasible private participation." (Federal Register/Volume 49, Number 205, October 22, 1984, page 41311.)

On January 24, 1986, UMTA issued a Notice of Guidance on Documentation of Private Enterprise Participation in Urban Mass Transportation Programs. UMTA's Region II office has conducted meetings to explain this Notice to New York MPO's and operators, both public and private, and to collect baseline data on current level of contracted service. UMTA's federal legislative proposal for the restructuring of its assistance program is specifying 5% annual incremental increases in contracted service from 1987 through 1990.

The policy intent of the federal government is recognized by NYSDOT and CNYRTA. NYSDOT's Transit Division has formed a Privatization Task Force to provide technical assistance across the state in utilizing private operators to best advantage. CNYRTA is documenting its private sector involvement for UMTA's Region II office.

The other barrier noted above which is subject to modification at the federal level is Section 13(c). Federal legislative attempts to set time limits on the Section 13(c) process have failed in recent years due to strong union opposition. UMTA is currently proposing repeal of 13(c). While some states outside New York have enacted legislation clarifying management rights in the 13(c) process, actions by New York's current administration relating to labor negotiations in the New York City transit system indicate that similar legislation would not be enacted in New York.

Considering one union's perspective, the ATU local in Syracuse representing Centro drivers no longer considers 13(c) an effective means of protection due to the substantial legal fees associated with its procedures. Instead, Syracuse's Local 580 prefers to obtain desired job security and working conditions through labor contract negotiations which, if necessary, are extended through mediation and arbitration.

2. State

At the state level, NYSDOT and the New York State Legislature could lower barriers to private operators in Onondaga with a creative use of annual performance evaluations, transit operating assistance regulations, and new legislation. The performance evaluation program of NYSDOT's Transit Division is a useful tool for persuading both public authorities and local municipal sponsors to seek the most economical, efficient, and effective transportation providers. For example, NYSDOT should encourage the Syracuse MPO or CNYRTA to make detailed cost analyses of services currently provided by CNYRTA's operating subsidiaries and then solicit bids for high deficit services from interested private providers. The figures presented earlier in this chapter, as well as the Rochester E & H example, indicate that such a bid process would not always favor the private sector, but should favor the overriding public interest in economical, efficient, and effective service. If threatened federal operating assistance reductions become reality, such a bid process may become necessary and even mandatory.

A regulatory barrier for some private operators is the prohibition of State operating assistance for services using vehicles of less than eight passenger capacity. As indicated earlier, CNYRTA escapes this prohibition due to the structure of New York's TOA program. However, CNYRTA's experience with taxis and the positive reports from other parts of the United States (see Chapter 1) indicate that the costs of both E & H and low-volume transit services could be significantly reduced if TOA regulations permitted to the use of State subsidies in contracts with taxis. NYSDOT's Transit Division is interested in this regulatory change, at least for E & H service, but wants to ensure that adequate controls are maintained.

The New York State Legislature could promote private operation of public transportation by revising the mortgage recording tax legislation. Currently, a New York county which is a member of a transportation authority must transfer the proceeds

of a .25% mortgage recording tax to the authority. If the county terminates its membership, it can continue this tax but must remit the proceeds to the State Comptroller. If counties could keep this tax for contracting with private operators, they would have more flexibility in securing the service which suits their needs. Such a retention is currently proposed for Orange, Rockland, and Dutchess Counties if they choose to terminate membership in New York City's Metropolitan Transportation Authority.

3. County

A major thesis of this study is that the key level of government for promoting the private sector in public transportation in New York is the county. Federal and state subsidies are vital, but in New York the decision as to whether these monies are to be used to support public or private operations is most often made at the county level. In Onondaga, county government support has been crucial to the survival of private sector bus line operations. Actions the County could take to promote further private operator participation are detailed below.

Since CNYRTA is a State agency with mandated local revenue sources, Onondaga County has limited control over its policies. As shown by the joint public/private occupancy of the new maintenance facility, however, the County has persuaded CNYRTA to agree to specific policies. Specifically, the County can influence CNYRTA policy through county-appointed CNYRTA board members, through membership on the central New York MPO where CNYRTA's TIP projects and annual requests for federal operating assistance are reviewed, and finally, and most significantly, through review of CNYRTA's requests for supplemental local assistance. Currently, Onondaga County sponsors and provides local assistance for three private operators in intercounty service, sponsors two intercity operators without local assistance, and contracts directly with one elderly and handicapped operator.

The County government would be the appropriate institution to promote increased private provision of commuter service, low-demand service, E & H service, and vanpooling. For example, Cayuga, Oswego, and Onondaga may consider vanpooling to be more relevant than current service to their rural areas. CNYRTA's use of mortgage recording tax proceeds from the three counties to provide the vehicles would be an appropriate means of initiating this service. It is unlikely, however, that CNYRTA would consider this use of mortgage recording tax revenues without persuasive effort from the counties, particularly Onondaga.

4. City

Briefly considering promotion of private operators by municipal governments, the Syracuse city government could facilitate at least two privately operated modes: taxis and airport shuttle service. If the City revised its ordinances to permit taxis to carry multiple parties to multiple destinations, this would permit increased use of taxis for E & H transportation, both subsidized and self-sufficient, and greater use of taxis for low-demand transit service. With regard to the airport, the Syracuse Common Council needs to define a ground access policy, design the appropriate contracts to implement this policy, provide the operating subsidies if so required, and then ensure adequate police enforcement. Realistically, the probability of such action by the Common Council is not high.

For a summary of Appendix A, see Chapter III.

APPENDIX B -- SUFFOLK CASE STUDY

## I. HISTORICAL ORIGINS OF EXISTING PUBLIC TRANSPORTATION SYSTEM

### A. PUBLIC TRANSPORTATION SERVICE IN SUFFOLK COUNTY: 1960-1980

A number of the bus companies currently operating in Suffolk were established in the 1920's. Considering that until approximately the early 1970's there were no government subsidies and the population density of all but the western third of the county was very low, it is logical to ask how these firms derived sufficient revenue to survive. Though individual company histories vary in detail, some general patterns emerge. Prior to 1950, dependence on public transportation throughout the U.S. was proportionately much higher than today. Suffolk was no exception, and a number of local bus routes acted as feeder services to Long Island Railroad (LIRR) stations. Since the LIRR provided the east-west service for most public transportation patrons, little intertown bus service developed. A small group of Suffolk operations also provided charter and tour service. Finally, a number of Suffolk companies covered their administrative overhead and investment in maintenance facilities through contracts for school transportation. Typically, a school contract required 20 to 30 vehicles. Once a bus operator had established the facilities to service such a fleet, the addition of a few vehicles for transit service was readily accommodated.

Given these origins, what Suffolk markets were served? A review of regulatory hearings for Suffolk County operators since 1960 indicates some of the parties requesting service.

1. Requests from colleges for town-campus service,

2. Requests from municipal officials for feeder systems focused on shopping centers and LIRR stations,

3. Requests from residents similar to #2, but also for express service to NYC, particularly during LIRR strikes,

4. Requests from the LIRR to substitute bus service for train service, and

5. Recognition by operator themselves of the market potential in the more densely populated western third of this county.

Factor #5 gave rise to another pattern of bus firm corporate development: the evolution of bus firms from taxi firms. This resulted from taxi operators recognizing demand, particularly in new residential areas, for commutation and shopping services. No firm with this origin has survived, however.

While the above markets permitted skeletal transit services to survive, Suffolk's public transportation in the 1960's and 1970's was in no way systematic. This lack of systemic connectivity prior to 1980 had multiple sources. First, the population density of the eastern two-thirds of the county was too low to support a systematic transit service. Second, Suffolk has a number of regional centers, but lacks a dominant urban focus making intracounty commutation patterns quite heterogeneous. Third, the LIRR actively opposed applications to New York's Public

Service Commission (PSC) for east-west intra county bus franchises that might compete with its service. Finally, a New York statute required all intrastate bus service to obtain the consent of each municipality through which the service operated. This obstructed the formation of connected bus routes whenever local political rivalries took precedence over public service considerations.

This last barrier to connectivity was eliminated in 1971. State legislation allowed the Suffolk Legislature to over-rule municipalities blocking the completion of through bus routes. With a two-thirds vote of the county legislature, local consents could be authorized for any location in the county. Similar state legislation had been enacted for Nassau in 1937 and Westchester in 1970. State legislation in 1984 eliminated the need for local consents completely.

As the '70's progressed, there was little additional effort to improve the connectivity of Suffolk bus routes, and service in the individual market segments deteriorated. This deterioration had numerous well-known causes: increased auto sales and highway building, low gasoline prices, and the popularity of sprawling residential suburbs not amenable to service by transit. The decline in service showed up in numerous ways: substitution of school buses with cigar boxes for transit vehicles with fareboxes; requests to discontinue services to NYSDOT's Regulation Division, the successor to the PSC; and finally, termination of business by some bus companies. Local government initiative to preserve these services was slow in coming.

In 1973, Suffolk's county executive proposed a limited subsidy of bus lines and a county takeover of some routes. The Suffolk Legislature decided, however, that it could not fund such proposals. This resistence to spending local dollars for public transportation had at least two sources. First, the conservative political philosophy prevailing in the county generally opposed commitments of local funds for previously-unfunded categories of social welfare, e.g., public transportation. Second, and possibly related, many Suffolk residents had relocated from New York City and its outer boroughs in the '50's and '60's and resisted the noise, smell, and sight of transit buses on residential streets as had been common in their previous locations.

In 1974, Suffolk County began participating in the State Transit Operating Assistance (TOA) Program. However, it met the local match requirement in a manner which reduced the beneficial impact of local funds. Suffolk mandated that bus firms which it sponsored for State subsidies would carry the E&H for half fare. The county would then reimburse the operators the remainder of the fare.

Suffolk also cut into the total State subsidy available by taking out a percentage for the administration of the program. The private operators protested to the State government, but to no avail. Considered from another perspective, Suffolk's commitment of local funds to public transportation in 1974, frugal as it was, was proportionately more than many other New York counties which required the operators themselves to advance the local match. Suffolk maintained its local contribution through the 1970's and increased it signficantly in 1980.

Comparing Suffolk with neighboring Nassau, the latter bought the assets of its remaining private operators in 1973 and contracted with a public operator, the Metropolitan Suburban Bus Authority (MSBA), to provide local service. MSBA was a division of the Metropolitan Transportation Authority (MTA) established to provide

public operation of local transit service in the following suburban counties: Suffolk, Nassau, Westchester, Rockland, and Putnam. Of these, only Nassau elected to join MSBA. The others chose to provide service with small municipal operations and/or contracts with private operators. MSBA has subsequently received recognition for the density of its service provision, but its operating costs per unit of service have exceeded those of other suburban New York counties.

## B. ROLE OF LOCAL PLANNING & LEGISLATIVE PROCESS

As the effects of the 1974 fuel emergency spread over the U.S., Huntington, a densely settled affluent town in northwest Suffolk, commissioned a study of local public transportation needs. This study recommended a network and schedule of services and evaluated alternatives for ownership and operation. Since the introduction of a coordinated county system was not yet under discussion, Huntington implemented these recommendations by establishing the Huntington Area Rapid Transit (HART) System in November, 1977. It contracted with two local private operators for service on local routes. By the middle of the following year, the town was dissatisfied with the poor record-keeping of the private firms. Additionally, the firms were anticipating union conflicts between transit and school bus drivers. Hence, the town decided to own and operate the system itself and terminated the two operating agreements. The resulting municipal operation has been well patronized, but its revenue and cost figures compare poorly with both local and national peers. These comparisons are analyzed later in this appendix.

Meanwhile Suffolk's transportation planning department studied public transportation in the whole county and developed four proposals for service provision:

1) a modification and minor expansion of the present system;
2) an extensive fixed route system;
3) use of paratransit feeder services;
4) a combination of the above three proposals.

The report recommended a two-phased implementation of the last alternative, taking into account local financial constraints.

The report was issued in 1978. Implementation began in November, 1979. The first step was the design of a countywide network of bus services which linked existing subsidized services into a coordinated system. Next, the county had to decide which firms would provide the new services necessary for systemization. This decision involved conflicting considerations: New York's municipal bidding law requiring all contracts over $5000 per year for service provided to a municipal government to be bid and the granting of exclusive operating franchises for specific routes to individual bus firms by NYSDOT's Regulation Division. To minimize the conflict, Suffolk used proximity, i.e., the county negotiated with the firms operating closest to the new routes.

Initially, New York State's Division of the Budget (DOB) objected to Suffolk's lack of bidding. However, NYSDOT's Regulation Division explained to DOB that bidding could result in extended litigation over exclusive franchises. This explanation plus a resolution by the Suffolk Legislature approving negotiated contracts were sufficient for DOB to drop its objection. Negotiated contracts have subsequently been approved by both the state comptroller and attorney general.

Suffolk's reconciliation of bidding and franchise regulations has produced few complaints from local private operators. However, potential hazards of relying on negotiation as opposed to bidding include the exclusion of lower cost providers and lower cost modes from consideration. This will be explored later in this appendix.

Once Suffolk decided on the structure of its new system, a speedy implementation was desirable to halt further ridership declines, preserve existing services, and acclimate the riding public to a coordinated system. The need for quick action prompted the county's decision to keep public transportation in the private sector. By contracting with local private operators, the county could utilize existing operating organizations, vehicles, and maintenance shops.

The resulting public transportation services in Suffolk fall into three categories institutionally. First, the franchised routes long held by Suffolk's private operators are subsidized by the county "passing through" the state subsidy (TOA) which is earned on a passenger and vehicle mile basis. Second, the routes designed by the county to link up the franchised routes into an integrated system are designated Suffolk County Operations (SCO). These routes are operated by the same firms operating the franchised routes. However, services operated under contract with SCO are guaranteed a profit. Third, there are three public sector operations in a large town and two villages. Table B-1 presents representative percentages of passengers and vehicle miles generated by the three categories of operators.

TABLE B-1
SUFFOLK COUNTY TRANSIT SYSTEM
DISTRIBUTION OF PASSENGERS AND VEHICLE MILES
AMONG THREE CATEGORIES OF SUBSIDIZED OPERATORS

| | | % Passengers Oct.-Dec.84' | % Veh. Mi. Oct.-Dec.'84 | % Passengers Jan.-Mar.'85 | % Veh. Mi. Jan.-Mar.85' |
|---|---|---|---|---|---|
| (1) | Pass-through of State Aid (Franchised Routes) | 34.5 | 41.5 | 33.1 | 36.7 |
| (2) | Suffolk County Operations (SCO) (Contract) | 51.4 | 52.3 | 52.2 | 56.3 |
| (3) | Public Operators | 14.1 | 6.2 | 14.7 | 7.0 |

The county has deliberately kept public transportation institutional structure to a minimum, retaining for itself service planning, service monitoring, grants application, and regulatory compliance functions. The planning department intitiates new services and modifies existing routes and headways. The operators are consulted at the end of the planning process to ensure that proposed changes are operationally feasible. The Suffolk system has operated in this manner satisfactorily for over five years. For most Suffolk private operators, transit is a small part of their total business such that incremental service changes are a

minor concern. Hence, these operators have accepted their limited role in service planning. Additionally, the operators are pleased that a part of their business that only recently produced deficits is now producing modest, guaranteed profits.

Suffolk's system supports a thesis of this study, namely that the attitude of the county government, particularly the county executive, is crtical to the role of private operators in any New York county. The Suffolk County Executive from 1971 to 1979 supported public transportation verbally and commissioned planning studies, but restricted the local funds available for subsidizing private operators. The county executive elected in 1979, however, promoted the use of county funds for a privately operated public transportation system.

## C. INFLUENCE OF CAPITAL INVESTMENT POLICIES ON PRIVATE SECTOR INVOLVEMENT

Suffolk was able to rapidly implement its coordinated system in 1980 by using existing vehicles and maintenance facilities. However, these vehicles were either old transit buses or school buses, neither of which were reliable or attractive to the riding public. Acquisition of new vehicles was vital if the new system was to increase ridership. The county had already used federal and state capital grant programs to secure vehicles for some private operators in 1978. A precedent had been set, therefore, for a decision important to the success of the new system, namely, that the county would secure government grants and become the owner of the new vehicles.

Ninety-three new vehicles have been so obtained and are leased to the private operators for nominal fees. The county thus has flexibility if it is dissatisfied with a particular operator and wants to shift its equipment to a different firm.

To date, this leasing procedure has worked satisfactorily since the vehicles in use are only a few years old. However, a recent ATE study has warned that major maintenance problems can be expected under current institutional arrangements.

The county leases vehicles to eight private operators. These firms vary in maintenance equipment available and in mechanics' skill level. Complicating this situation is the fact that, due to minimum bid requirements, each county vehicle purchase has been awarded to a different manufacturer, and each purchase has been distributed among several Suffolk firms. Therefore, a typical Suffolk bus firm has several types of school buses for its main operation and up to four transit vehicle types for its public transportation service. While not a barrier to private participation, such mixed vehicle rosters complicate the maintenance of Suffolk's public transportation fleets. Suffolk has acknowledged ATE's warning and is implementing a detailed maintenance procedures study. Additionally, the operators have formed an association primarily to exchange vehicle servicing information. This study suggests that the county could ease this problem by shifting buses among operators so as to decrease the number of vehicle types in individual garages. Though all Suffolk vehicles must pass thorough, semi-annual NYSDOT vehicle inspections, this requirement alone cannot assure proper maintenance between inspections nor the use of procedures best suited for vehicle longevity.

Finally, the LIRR has influenced intracounty public transportation service. In the early '60's, the LIRR actively opposed applications of Suffolk bus firms for franchises to provide east-west service in competition with rail service. When

rail ridership declined sharply in the mid-1960's, however, the LIRR contracted with a private operator to substitute bus service for some train schedules. Subsequently, the railroad transferred this contract to MSBA when the LIRR was taken over by the MTA, of which MSBA was a division. However, when development along Suffolk's South Shore increased significantly, train service was resumed.

Given that rail service exists along Suffolk's South Shore and also through the center of the county to Greenport on the North Fork, what is the potential for greater use of rail in intracounty passenger service? The County Transportation Department has pursued this option with limited success. The LIRR modified its fare structure to reduce the bias against passengers riding within Suffolk or between Suffolk and Nassau. However, few intracounty passengers have been subsequently attracted to rail usage largely due to the lack of employment opportunities within walking distance of LIRR stations. Hence, the majority of riders on the LIRR from Suffolk and Nassau travel to New York City.

## D. INFLUENCE OF FEDERAL AND STATE ASSISTANCE PROGRAMS

Suffolk relied on State and Federal aid to maintain skeletal service from 1974 to 1980 and to assist in establishing a connected network in 1980. The fact that Suffolk waited until after 1974, as Westchester had done but Onondaga had not, to establish a public transportation system, allowed the choice between public and private operators to be more equitable. Prior to 1974, the lack of State and Federal operating assistance hindered public authorities such as CNYRTA in Onondaga from contracting with the private sector. Beginning in 1974, both New York's TOA program and the Federal program made specific allowance, without mandates, for public and private operation. As shown above, Huntington initiated its system with private operators in 1977, then switched to a municipal operation in 1978. The county, however, kept its system privately operated in 1980.

In 1985, Federal operating assistance provided 3.5% of HART's costs and 11.1% of the costs of SCO (see Table B-2). Thus, a termination of Federal operating assistance in the 1985-86 budget would have forced Huntington to either raise its fare a nickel, increase local aid by 6%, reduce some service, or, as suggested here, convert to private sector operation and actually save dollars. For SCO, termination of Federal operating aid could lead to one or a combination of the following alternatives: a 10¢ fare hike, a reduction in service, or an increase in local aid of about 48%.

In 1985, the State provided over 19% of HART's operating costs and over 36% of the operating cost of SCO (also shown on Table B-2). Both Suffolk systems would have a more difficult time continuing operations if they lost State operating assistance than if they lost federal aid. What is not so clear is whether the public or private sector system would be more likely to survive if either of these aid sources were terminated. Probably the public/private dichotomy would not play as significant a role in survival as:

1. the availability of other revenue sources to assist in maintaining public transportation service,

2. the skill of system managers, whether public or private sector, in securing alternative funding sources, and

TABLE B-2
FINANCIAL COMPARISON
SUFFOLK'S PUBLIC AND PRIVATE OPERATORS
1985

| | Suffolk County Operations | Suffolk Franchised Routes | HART Public |
|---|---|---|---|
| EXPENSES | $5,927,775 | $4,035,622 | $1,668,000 |
| REVENUES | 1,761,099 | 1,185,215 | 258,000 |
| DIFFERENCE | 4,218,676 | 2,850,407 | 1,410,000 |
| AID | | | |
| Federal | 663,000 | 0 | 58,000 |
| New York State | 2,161,500 | 1,427,450 | 323,200 |
| Local | 1,394,176 | 333,500 | 1,028,800 |
| TOTAL GOVERNMENT AID | 4,218,676 | 1,760,950 | 1,410,000 |
| PROJECTED DEFICIT | | --(1,089,457)-- | |

3. the skill of system managers in tailoring service offerings to the market demands and resources available.

Finally, Suffolk's current limitations on expanding the frequency and geographic extent of service are primarily financial and, to a lesser degree, choice of mode. Federal and state subsidies are limited by funding formulas. County and local subsidies are limited by competing demands for public funds. While the current extensive network and achievement of the farebox recovery goals of SCO have been facilitated by reasonable fares and low cost private operators, increased privately provided mobility might result from more creative promotion of carpools, vanpools, and express busing. Said in another way, to the extent that service expansion of SCO depends on external subsidy sources, little expansion can be expected in the next few years, particularly in light of Reagan Administration intentions. However, if greater use was made of lower cost paratransit modes, some expansion in service might be feasible.

## E. CONSIDERATION OF CONTRACT PROVISIONS AND OPERATING ENVIRONMENT

The system designated as SCO is in its sixth year. In minimizing its institutional structure, Suffolk has effected only nominal controls over its contractors in such functions as cash handling, service reliability, driver competence, and As indicated by the percentage split on Table B-1, the largest amount of service is provided under the SCO category in which the county designs the route, receives all the fares from the operator, and guarantees the operator a fixed percentage of operating expenses as profit. The percentage of service provided by SCO has

increased since the system began in 1980. Even with minimal control, however, SCO contracts have been difficult to administer given Suffolk County's small transportation staff. For example, in 1985 the county was still auditing operator expenses from 1981 and 1982 and making necessary financial adjustments. Largely due to these auditing difficulties, SCO contracts are being converted from payment according to expense categories to payment per vehicle mile of service. The latter method will provide some incentive for efficiency.

Given these administrative difficulties with a conceptually simple contract, other incentive elements are not likely to be added to SCO contracts in the near future. Suffolk County transportation officials currently do not have the time to structure appropriate incentives and monitor operational performance of incentive measures.

Even with the greater administrative burden of SCO contracts, as opposed to the contracts under which state subsidies are simply passed through to operators for their franchised routes, it is to the county's advantage to expand the percentage of the system operated in the SCO category. The reasoning here is based on the difference in perspective between an individual private operator and the county transportation department. The former's main interest is in maximizing the revenue from the routes it operates, while the latter desires to have the system serve as many county residents as possible. These objectives are not necessarily conflicting.

The public welfare objectives of the county are more readily achieved under the more detailed provisions of SCO contracts than under the general "pass through" contracts. With its guaranteed, though limited, profit provision, the SCO contracts may have more appeal over time to the private operators as well because no profits are guaranteed under the "pass through" contracts.

The other major Suffolk contract type is between the county and the three public systems: Huntington Area Rapid Transit (HART), Village of Port Jefferson, and Village of Patchogue. The county has the least control over these public operations. Specifically, contracts with public operators stipulate that the county only be notified, not consulted, about service changes, whereas the county may influence service changes under the other two contracts.

County officials are fully aware that the system is currently operating more on cooperation and trust than control. Complaint analysis indicates that informal cooperation is working well. One knowledgeable observer of the Suffolk system feels that the cooperation currently existing is based on the high percentage of school contractors among the private operators. For such operators, a requirement of their corporate existence has been cooperation with government bodies, specifically school boards. This contrasts with the history of many transit and intercity operators for whom relations with government agencies, particularly regulatory boards, have been as often confrontational as cooperative.

Realizing that trust and cooperation may be inadequate for the long term, Suffolk is attempting to improve its control over contracted operations. Specifically, the county will install electronic fareboxes in its transit vehicles, standardize cash handling procedures, and implement vehicle maintenance monitoring.

Performance evaluation by NYSDOT of both SCO and HART has demonstrated SCO to be more economical and efficient than HART, while HART is more effective in passengers carried/mile. SCO's greater economy and efficiency is derived from the significantly lower wages paid by the private operators. HART's high wages originated when a town administrator classified bus drivers as heavy equipment operators falling under the jurisdiction of a strong union. The greater effectiveness of HART is due to operations confined to the most densely populated part of the county. To date, the high operating costs of HART have caused minimal concern among Huntington's town officials. Though the town must cover the system's remaining deficits, the dollar amounts required to date have not been an important local issue.

### F. EFFECT OF THE CHANGING REGULATORY ENVIRONMENT

As part of the changes in procedures for securing franchises implemented on January 1, 1984, NYSDOT's Regulation Division began making all temporary franchises permanent. Suffolk immediately requested an exception to this procedure for the routes in the SCO category which the county had designed in 1980. In requesting this exception, the county was not challenging any permanent operating rights held by Suffolk firms prior to 1980. Rather, the county wanted to retain the flexibility to remove unsatisfactory operators from SCO. NYSDOT's Regulation Division recognized the validity of this request and refrained from converting the temporary Suffolk franchises. However, since temporary franchises require renewal every six months, NYSDOT is considering a new category of operating franchise relevant to the Suffolk and Westchester systems. This franchise would not require periodic renewal, but would be contingent on retaining the operating contract with the county. Thus, the county would retain the desired flexibility in selection of operators. So far, this is still in the conceptual stage.

## II. EVALUATE BARRIERS TO PRIVATE SECTOR INVOLVEMENT AND ASSESS HOW BARRIERS CAN BE REDUCED OR ELIMINATED

### A. POTENTIAL PRIVATE SECTOR ROLES

Similar to Westchester, Suffolk, with the exception of the Town of Huntington, a couple of villages, and the commuter railroads, has made as full a commitment to private operators as is feasible in an era when most public transportation services must be publicly subsidized. Further involvement of private operators is only feasible through marginal increases in such services as intracounty express, vanpools, and/or subscription service, and a reversion of Huntington's local service to a private operator.

### B. BARRIERS TO PRIVATE SECTOR PERFORMANCE OF THESE ROLES

The current major restriction on additional intracounty express service is limitations on subsidies from federal, state, and/or local sources. Given current UMTA policy directions, increases in federal operating assistance are not plausible. Increases in New York's TOA are scheduled for State Fiscal Year 1986-87, so that additional local matching funds are necessary to implement additional services. Given that the expressed demand for these services is minimal, such additional commitment is not immediately foreseeable.

Vanpools are generally not operated by traditional transportation companies such as bus and taxi firms. Therefore, vanpool usage statistics are difficult to secure. New York State's Energy Office has promoted vanpool use throughout the state to conserve fuel, but this effort has generated only a minimal response.

In a 1981 study of the potential for vanpool use on Long Island, the Energy Office perceived significant potential, particularly with nonprofit institutional arrangements. This finding is being implemented with infusions of state and federal funds for the operation of a nonprofit ride-sharing agency. Currently, this agency has contracted with a vanpool management firm which is operating 15 vans. While some large employers have expressed interest both by contributions and request for ride-sharing plans, the agency's major task is a significant increase in corporate participation.

The efforts of this ride-sharing agency have drawn a mixed response from the Suffolk County Government. With its 11,000 employees, the county government is an appropriate focus for ride-sharing promotion. Of these employees, however, only 183 responded positively to an initial solicitation. On the other hand, a cooperative relationship has been established with the Suffolk County Transportation Planning Department. After an initially distrustful period when the Planning Department perceived this agency as trying to lure away transit riders, relations have improved such that the county department refers transportation requests that its bus system cannot reasonably fulfill to the ride-sharing agency, and the ride-sharing agency refers requests that the bus system can fulfill to the Planning Department. Support for vanpool service in Suffolk and the rest of Long Island over the long run must be from local sources, as NYSDOT's operating assistance regulations forbid assistance for systems using vehicles of less than 15 passenger capacity unless in E & H service.

Subscription bus activity is currently at an even lower lever than vanpooling in Suffolk and is likely to stay that way. Initiative from passengers to organize subscription buses from Suffolk to New York City has only occurred when other service on the LIRR was disrupted. Such services lasted only a few months due to prohibitions from New York City's Bureau of Franchises and resumption of rail service. While the national Bus Regulatory Reform Act of 1982 has provided a means of evading Bureau of Franchise restrictions, the daily congestion on Long Island highways effectively limits subscription busing. Within Suffolk itself, a lack of focus of commutation patters has restricted development of subscription or commuter express service to date. The current rapid growth in employment opportunities in the western third of the county may change this situation. If so, it is more likely that the Suffolk County Transportation Planning Department will contract with a private operator for express commuter service than that subscription service will develop from groups of passengers contracting with private operators.

Finally, the major remaining opportunity for the private sector in Suffolk would be a reversion of the Town of Huntington's HART system to private operation. Performance evaluations by NYSDOT of all the Suffolk systems have been conducted since 1980. Comparative statistics from these evaluations are presented in Table B-3.

TABLE III
PERFORMANCE COMPARISON
SUFFOLK'S PRIVATE AND PUBLIC SYSTEMS

| Performance Indicators | CY 1981 SCO (Private) | CY 1981 Hunt. (Public) | CY 1982 SCO (Private) | CY 1982 Hunt. (Public) | CY 1983 SCO (Private) | CY 1983 Hunt. (Public) |
|---|---|---|---|---|---|---|
| COST EFFICIENCY | | | | | | |
| Cost/Veh. Mi. | 1.52 | 3.34 | 1.56 | 3.57 | 1.55 | 3.61 |
| Cost/Veh. Hr. | 24.36 | 46.86 | 24.48 | 51.82 | 25.30 | 52.21 |
| Veh. Mi./Emp. Hr. | 8.37 | 5.58 | 10.04 | 5.58 | -- | 5.79 |
| Veh. Hr./Emp. Hr. | .52 | .40 | .64 | .38 | -- | .40 |
| SERVICE EFFECTIVENESS | | | | | | |
| Pass./Veh. Mi. | .76 | 1.92 | .82 | 1.93 | .79 | 1.75 |
| Pass./Veh. Hr. | 12.21 | 27.00 | 12.88 | 28.07 | 12.96 | 25.32 |
| COST EFFECTIVENESS | | | | | | |
| Oper. Rev./Cost | .17 | .15 | .24 | .16 | .28 | .17 |
| Cost/Passenger | 1.99 | 1.74 | 1.90 | 1.85 | 1.95 | 2.06 |
| Pass. Rev./Pass. | .34 | .26 | .45 | .28 | .54 | .36 |
| Deficit/Pass. | 1.65 | 1.48 | 1.45 | 1.56 | 1.41 | 1.71 |

Analysis of these statistics indicates the following:

1. SCO produces an operating cost per vehicle mile 46% that of HART and a cost per vehicle hour 52% that of HART. SCO's lower vehicle mile cost is partly attributable to being largely an intertown high mileage operation while HART is a low mileage local transit service. Another reason for SCO's lower cost per unit of service is the greater productivity of SCO employees as shown by the higher figures for vehicle mile/employee hour and vehicle hour/employee hour in CY 1981 and 1982. Most of the cost difference, however, results from wage rates over 50% higher for HART's drivers than SCO's private sector drivers.

2. HART has greater service effectiveness than SCO in passengers carried per vehicle mile and vehicle hour largely because HART serves a more densely populated area than most of SCO. Thus, if SCO was to take over HART, or if the Town of Huntington was to contract directly with a private operator, HART's effectiveness would probably not change significantly, provided, of course, that the town monitored the service output. Parenthetically, it should be noted that SCO has been steadily improving its effectiveness in relation to HART.

3. The operating revenue to cost ratio is more a reflection of policy than performance so that a comparison of the two systems on this basis will not be made.

4. SCO's cost per passenger has improved from being greater than HART's in CY 1981 and CY 1982 to being less than HART's in CY 1983.

The findings above indicate that more effective use of public funds could be made if the public sector HART was converted to private operation. However, three significant obstacles currently block such conversion.

First, the Town of Huntington had a strongly negative experience when it initiated HART in 1978 and contracted with a private operator to provide the service. As a result of extensive noncompliance with contract terms, the town converted to public operation. This initial negative experience can be expected to limit consideration of private operators by Huntington officials. On the other hand, these officials are aware of the cost effective service being provided in the rest of the county by the private sector.

Second is the low priority given HART's subsidy by town officials. Considering the political perspective, most of HART's staff are Huntington residents, so that their high wages are largely fed back into the local economy. There is, therefore, no local support for a conversion that would adversely affect the finances of local residents. In the town's view, while HART's operating costs compare unfavorably with the remainder of Suffolk, the local dollar amount required is not excessive.

Finally, the union representing HART's drivers will vigorously resist conversion to private sector management or replacement by a contracted private operator as in the rest of Suffolk. This resistance is expected since the primary purpose of such a change would be to make HART's wage scale similar to other Suffolk operators.

A major tool available to HART's union for blocking a shift to private operation is the federal 13(c) legislation. By refusing to sign the Town of Huntington's applications for federal capital or operating assistance, the union could block such applications. However, an examination of federal aid figures indicates that if the union refused to sign an operating assistance application, the town would lose less than $60,000. If the union's reason for refusing to sign was the Town's intent to convert to private operation and the Town converted anyway, an annual saving of approximately $300,000, based on a conservative estimate of a 25% savings in wages, could be realized.

Currently, HART has some small capital projects in the application stage which the union could also block with the 13(c) process if privatization was perceived as a threat. The operating savings to be realized from converting to private operation could cover these capital projects in about two years, however, if the union persisted in blocking the federal application. It is obvious, therefore, that HART bus operators are the beneficiaries of a town policy decision that may have political, but certainly lacks economic, justification.

Another tool available to HART's union to obstruct conversion to private operation is a section of New York's Civil Service Law known as the Taylor Law. New York's Public Employees Review Board (PERB) has ruled that a public sector employer cannot unilaterally transfer work of existing public employees to private contractors without negotiating subcontracting with employee bargaining units (1). Even where the public sector bargaining unit is reduced through attrition only, the public employer must negotiate the subcontracting of work formerly performed by those employees who left voluntarily because of the effect such subcontracting would have on the scope of the bargaining unit (2). Only when the public employer

undertakes new work is it apparently free from this requirement to negotiate subcontracting. The word "apparently" is used deliberately as the application of the Taylor Law to the privatization of transit service has not been tested by New York transit unions so far.

C. PROPOSED MEANS OF BARRIER REDUCTION OR ELIMINATION

1. As indicated earlier, the barriers to increased intracounty express service is the limit on available public subsidies and market demand. With the expansion of employment opportunities in western Suffolk noted earlier, the proper approach to increased express service will be for the County Planning Department to monitor demand and request bids from private operators for specified routes and schedules as the market warrants.

2. Another relevant mode for meeting needs for intracounty commuter service in Suffolk is vanpools, as discussed in Section II-B above. Now that funds have been secured for the administrative expenses of a nonprofit Long Island vanpool agency, a marketing effort is needed among Suffolk's corporate community emphasizing the business and community advantages of vanpooling. The potential is promising, particularly among temporary help agencies which supply low-salaried help to manufacturing plants. If promotion is effective, van capacity may be exceeded making commuter express busing, which is eligible for state subsidy, appropriate.

3. As indicated earlier in this appendix, a saving of $300,000 annually is apparently not considered large enough to justify finding other municipal jobs for Huntington's highly paid bus drivers. As long as the town is covering the deficits and no additional subsidy is requested by Huntington from federal, state, or county sources, no means of lowering the barrier to private participation can be effectively exerted from outside the town.

4. Huntington's Town Board has been considering additional elderly and handicapped service. Examples from other public transportation systems in the U. S. indicate that 13(c) opposition to private provision of service is most readily overcome if the service is new and additional. Alternatively, if the new service is provided entirely from local subsidies and farebox revenues, the 13(c) barrier can be eliminated. This would permit a demonstration of the economy, efficiency, and effectiveness of private operation.

For a summary of this Appendix, see Chapter III.

## NOTES

(1) Civil Service Employees Association vs. Newman, 1982. 90, A.D. 2d 114.

(2) State of New York, Public Employment Relations Board, Case No. U-8121, Niagara Frontier Transportation Authority and Niagara Frontier Transportation Authority Public Safety Officers Benevolent Association, p. 6.

APPENDIX C -- WESTCHESTER CASE STUDY

# I. HISTORICAL ORIGINS OF EXISTING PUBLIC TRANSPORTATION SYSTEMS

## A. DEVELOPMENT OF WESTCHESTER'S BUS SERVICE--1960-1974

Westchester County's location bordering New York City to the north means that it has long had the population density, particularly in the southern third of the county, to support a dense network of frequently scheduled public transportation services. The importance of public transportation services for southern Westchester residents has increased in recent years as their relative economic status has declined. Simultaneously, residents of central and northern Westchester report some of the highest family incomes in the U. S. and have chosen rail and express bus as the commutation modes of choice to downtown NYC.

Historically, Westchester has been served by trolley, commuter rail, bus, and taxi. This study focuses on buses as the most important local public transportation mode. Trolleys are of historic interest only, as this service ended prior to 1960, the starting point of this study. Commuter rail is not of major concern since this service meets few intracounty needs due to a discriminatory fare structure and the lack of local trips that can be conveniently served by rail. Taxis and other paratransit services are discussed where relevant to low volume needs.

Though southern Westchester's demographics have supported public transportation service since the early part of this century, there has long been anti-public transportation sentiment in the county. Such sentiment appeared during county parkway construction in the 1930's. Not only were buses legally barred from the parkways, but such prohibitions were enforced by construction geometrics, e.g., overpasses too low for buses. Such an attitude continues into 1986 as some parkways whose geometrics would permit movement of buses are declared off limits, even for temporary use while construction projects congest local streets. Additionally, some large Westchester employers have barred transit vehicle access to their properties. Also, residents in a northern Westchester town are fighting county plans to locate a satellite bus garage in a local commercial zone. Such sentiments are relevant to an analysis of Westchester's public transportation policies.

During the early 1960's, 20 bus firms provided local transit service in Westchester. In the southern part of the county, the firms were medium to large transit operations with some charter work to help meet costs and provide profits. In contrast to Suffolk operators, most of whom were school bus contractors, southern Westchester operators found school service financially draining as they were required to carry school children at half-fare on regular routes. Surprisingly, in spite of New York's generous reimbursement formula for school transportation, southern Westchester school districts have been slow to initiate yellow bus service, preferring to economize by having school children ride transit vehicles. In northern Westchester, a situation similar to Suffolk existed with numerous small operators providing combinations of transit, school, local feeder, commuter express, and charter services. One element shared by Westchester and Suffolk services during the 1960's was lack of coordination. There was no local institution pushing private operators to cooperate on schedules or transfers.

Consequently, intracounty trips between points served by two or more bus operators were at best inconvenient and many times simply not feasible, at least not on a daily basis. This was particularly true for the new office sites in the northern two-thirds of the county. Some coordination of service in the southern third of the county resulted from consolidation in bus firm ownership, but by the end of the decade, 1970, significant service gaps remained.

Contributing to uncoordinated services prior to 1970 was the state requirement that local consents from affected municipalities be obtained for all routes. If route changes were necessary for coordination, local political resistance could impede these changes. In 1970, state legislation enabled the County Legislature to override the local consent process by a majority vote.

This lack of local coordinative authority was noted by New York's Office of Transportation. In 1966, Westchester was urged to form a Department of Transit to deal with franchising issues. By Local Law #8 of 1969, the county established such a department and empowered itself to contract with bus firms to provide specified services in return for capital and operating subsidies. Even though Westchester's county executive in 1969 favored highway construction and improved rail service over coordinated bus service, the Westchester County Legislature assisted the private bus operators by securing a state grant of $2.4 million to provide 75% of the cost of 77 new transit buses. The remaining 25% of the cost was to be funded initially by the county, which would recover its expenditures through annual vehicle leases. An additional grant was subsequently received from the Metropolitan Transportation Authority (MTA) to cover this county portion. The county then became the owner of these vehicles. New York State appropriated funds for an additional 50 vehicles for Westchester in 1970.

Despite the new buses, however, ridership and service continued to decline. Between 1966 and 1972, the number of scheduled bus trips declined 12%. Passenger volume dropped 40% (30.7 million to 22 million) in the five years from 1968 to 1972. One of the first responsibilities of Westchester's new Transportation Commissioner in 1971 was to commission a study of existing services to determine how best to preserve and systematize them. The Commissioner emphasized that Westchester intended to keep public transportation services in the private sector. At the same time, she noted that no subsidy mechanism existed to extend privately provided transit services into developing parts of the county, where new services would certainly require initial support.

Reflecting the financial condition of Westchester's private operators in 1972, four of the major companies in the southern third of the county requested a 50¢ fare increase. Additionally, two companies requested either subsidy or tax relief to stay in business.

In August, 1973, Westchester's Transit Study was completed, just prior to the election campaign for Westchester County Executive. The retiring county executive had mediated private bus firm labor disputes, but had favored only minimal expenditure of local funds to coordinate and/or subsidize local service. By contrast, the county executive-elect, the former mayor of Yonkers, the largest city in southern Westchester, supported bus service. He intended to double the buses in service while keeping local operations in the private sector. Yet, even this executive, with his support for a strong county government role in public transportation, objected in early 1974 when the state operating subsidy program requiring local matching funds was announced.

In April, 1974, Westchester revised its Department of Transit, making it a more broadly responsible Department of Transportation. In May, 1974, the state initiated its Transit Operating Assistance (TOA) Program and, notwithstanding its previous objection to the local match provision, Westchester elected to participate, taking advantage of the state's no-interest loans to cover the first year local match requirement.

## B. DEVELOPMENT UNDER NEW YORK'S OPERATING ASSISTANCE PROGRAM--1974-1984

### 1. The First TOA Program--1974-75

With local and state subsidies in place, Westchester began writing purchase of service contracts with local private operators. These contracts specified routes and schedules, the deficits to be subsidized, and the profits to be earned. The contracts were signed on August 29, 1974, and covered the period May 1, 1974, to April 30, 1975, the termination date of the state's first operating assistance program. Right from the start of the state's program, Westchester dedicated part of its local matching funds to planning, coordination, and contract administration. An outspoken lawyer for the private bus firms complained to NYSDOT that such diversion of subsidies contravened the purposes of the TOA program. NYSDOT, however, sided with the county administration.

New York's TOA program provided operating assistance to public authorities by a different procedure from that used with systems contracting with private operators. Specifically, systems operated by private carriers (and small public sector operators also) had their subsidy levels determined by passengers carried and revenue vehicle miles generated. Major systems run by public authorities were funded on a specified line-item basis in the annual state budget. Thus, if Westchester attempted to operate efficiently by cutting back service during declining demand, its state subsidies would be immediately affected while public authority systems, some of which carried fewer passengers and provided less service than Westchester, would continue to receive their full state appropriation. A further discriminatory TOA provision was that Westchester, being an "unspecified system", did not receive the additional annual 40¢ per urbanized area resident subsidy that the specified systems, all operated in the public sector, did.

Westchester's county executive complained to a Governor's panel on transportation in late 1974 that the different procedures were clearly discriminatory against those systems run with private operators. His intent was to influence the reformulation of the TOA program scheduled for the spring, 1975 legislative session.

Within NYSDOT, a concerted effort was made in 1974 to evaluate the first year of the TOA program. Statistics collected for this evaluation showed that private operators in Westchester carried 18 million passengers in 1973 and realized a profit of $2 million. However, 1974 projections showed a $.5 million operating loss by 1975 and a $5 million annual loss by 1980. Such figures reinforced findings from the remainder of the state that a permanent TOA program was needed. Such a permanent program was enacted in 1975. The new program, however, continued to fund public authorities in the manner which Westchester had claimed as discriminatory against privately operated systems.

Parenthetically, NYSDOT's annual transit operating assistance budget preparations have as one objective a rough equivalence in assistance between specified and unspecified systems on a per passenger and per mile basis. Westchester, however, received significantly lower state assistance payments in 1982 and 1983 than comparable specified systems. Westchester increased its base fare $.15 in 1982. Farebox revenues increased so much that an operating assistance regulation limiting the profits of private operators was invoked, lowering the state payments.

2. Establishing the System--1975-1979

With a permanent state funding program in place and the large Westchester bus firms demonstrating growing losses, 1975 saw a number of county public transportation initiatives. Three million dollars was allocated for transit in the County Budget, and a new transportation commissioner was hired. The county again attempted to secure from the State Legislature the right to franchise bus firms at the local level and again failed. The purchase of service contracts were modified slightly and then extended a few months at a time. (These short extensions were repeated 19 times until January 1, 1979.) Finally, the County Executive established a Blue Ribbon Panel of corporate executives to evaluate public transportation services and recommend policy alternatives. This panel was established because of expected sharp increases in public transportation costs in 1976, significant fare increases on bus and rail services operated by MTA subsidiaries, and pressure from numerous sources, including some private operators, for a public takeover of all local services. The panel evaluated three alternatives:

1) a public takeover of some private operators,

2) financial assistance to private operators providing local service,

3) do nothing for the private operators, leaving them dependent on farebox alone.

The panel judged public transportation services important to Westchester's economy and quality of life, and with current cost trends, option 3 would quickly terminate these services. In considering option 1, the panel noted that public takeover of the private operators in Nassau County by the Metropolitan Suburban Bus Authority (MSBA) in 1973 had led to sharp cost increases, that a buyout would require significant local capital, and that an October 1, 1975, NYSDOT report had cited Westchester's privately provided services as being among the most efficient in the state. Hence, the panel urged the county to actively assist private operators in maintaining good local service.

Having made this recommendation, the panel suggested ways to keep the privately operated system at peak efficiency. The panel noted the current subsidy arrangement covered deficits and provided a profit, but had no incentives for operating efficiencies. Consequently, the panel suggested that contracts based on a fixed sum per mile of service would encourage operators to control costs. To deal with public transportation's increasing costs, the panel recommended operating efficiencies, controlled increases in local subsidies, and incremental fare increases. Finally, the panel urged a major marketing effort.

Westchester policy makers directed the Transportation Commissioner to incorporate these findings in a five year Public Transportation Development Plan to be submitted to the state and federal governments for capital assistance. Application for such assistance was made in 1976 for 105 buses.

In 1976, Westchester's peak fleet requirement was 206 buses. Over 50% of the buses available to meet peak requirements exceeded 20 years of service. The daily passenger volume was over 80,000. In making this application for vehicles, Westchester was deferring an almost equally pressing capital need, a central maintenance facility.

1976 also demonstrated a risk taken when contracting with private operators. One Westchester operator failed to provide the county with sufficient operating and financial data to support its subsidy requests. Consequently, the county suspended its subsidy. The operator then stopped paying wages, whereupon the drivers went on strike. The situation was resolved when another operator began running the local schedules of the striking firm. The takeover was quick so as not to give the county an excuse to begin a public sector operation, however small.

In March, 1977, NYSDOT's Regulation Division acknowledged the primacy of Westchester's Department of Transportation (WCDOT) in determining the suitability of local public transportation routes. WCDOT had modified a contracted route taking commuters to a subway station at the northern edge of the Bronx. Unfortunately, WCDOT had provided little advance notice of the route change. When local citizens affected by the change complained to NYSDOT's Regulation Division, the insufficient public notice was acknowledged, but the route change was confirmed. NYSDOT stated that WCDOT was the appropriate agency for such decisions.

In early 1978, WCDOT introduced a countywide uniform fare policy. Two features of Westchester's services preventing them from being considered a system prior to this time were the uncoordinated fares and lack of transfers among the services of the difference companies. WCDOT's 1978 fare proposal, subject to approval of NYSDOT's Regulation Division, included the following features:

1. Elimination of all fare zones,
2. A 50¢ flat fare for all single line intracounty bus rides,
3. A 25¢ transfer,
4. A monthly commuter book of 40 rides for $18 (a $2 savings),
5. Half fares for the elderly and handicapped.

NYSDOT approved the fares and fare zone removal but requested modifications to the commutation fares and transfer charge. WCDOT consequently introduced its 50¢ fare on May 1, 1978, with a transfer charge of 10¢.

Now Westchester's services could be considered a system. With coordinated routes and a uniform fare structure, passengers could travel to wherever the system reached, in a reasonable time, for a reasonable price, regardless of which private operator provided the service. Suffolk did not achieve such systemization until 1980. By contrast, most New York urbanized areas served by public transportation authorities had had their systems operational by 1971. It appears, therefore, that New York's privately operated local transit systems have been implemented where the prevalent conservative political philosophy was slow to acknowledge public transportation service as a legitimate function for local government involvement.

These systemic developments stabilized Westchester's services to the point where the county was willing to write long-term contracts with the major private operators. On January 1, 1979, a three year contract with an option to renew for two years took effect.

3. Analysis of Contract Provisions

Westchester has structured its contracts in three different ways in attempting to provide efficient service and profits for the operators. The 1974 contracts set profits at a percentage of farebox revenues. This hurt the operators when ridership decreases produced revenue declines. Such decreases resulted more from social trends that deterioration in service quality. Consequently, in the long-term contracts of 1979 to 1983, profits were set at 6% of operator expenses. This profit calculation produced a different negative result, namely that as an operator's expenses increased through internal factors such as wages or external items such as fuel prices, its profits also increased, regardless of service amount or quality.

Westchester therefore initiated a management fee on January 1, 1984. Under this arrangement, each contracted operator receives a fixed fee in lieu of profits. These fees have been set such that no firm receives a greater percentage amount than it did under the previous revenue or expense calculations. NYSDOT must approve the management fee amounts to prevent excess profits.

The 1984 contracts continue the county's former practice of negotiating operations budgets and thereby establishing net expense limitations for the upcoming year. The company is liable for cost overruns absent good cause such as unforeseen expenses; if good cause is demonstrated, the county is obligated to reimburse 50% of the net expenses. The new contracts also established Administrative Policy Committees, one for each contractor. The Committees are intended to resolve service, maintenance, fare structure, marketing, and audit concerns. They are comprised of three county representatives and a company representative. These forums allow the operators to influence decisions on the services they provide and offer the county an opportunity to obtain valuable operator input.

While the primary financial control mechanism of Westchester's contracts with the private operators is the budgeted expense cap (see Appendix E), the contracts also contain a penalty clause for service delays or disruptions when they amount to greater than 1% of scheduled service based on vehicle hours. Notwithstanding these incentives and this penalty, the management fee has not proven wholly satisfactory to either the operators or the county. For the private operators, the major incentive is to prevent unbudgeted expenses from eroding management fees. Thus, private operators tend to resist providing new services during a contract year for fear that unknown additional costs will erode their fees. From the county's perspective, additional services may be justified both to fulfill public service responsibilities and maintain countywide support for continued transit subsidies.

4. Consolidation of Westchester Firms

From 1974 to 1978, Westchester ridership declined steadily due both to social trends and the lack of systemic coordination. Additionally, the contracts reduced profits as farebox revenues declined. This increasing financial pressure reduced

the number of operators, particularly in the southern third of the county where the bus firms were primarily transit operations with insignificant alternative sources of revenue. Though the process was not complete by 1978, Westchester's largest bus firms were steadily consolidating into the one major firm, which by 1986 would run 85% of all route miles and carry 95% of all intracounty passengers. There are now seven operators under contract for local service and one for paratransit, down from the 20 firms that provided service in 1960. Some consequences of this consolidation were:

a. Family firms long associated with public transportation in Westchester left the business and/or the county through buyouts and/or lack of heirs.

b. The concept of a centralized maintenance facility to service most of the county's transit vehicles was simplified since there were fewer operators to accommodate.

c. The emerging major firm acquired significant bargaining power in relation to the county transportation department.

d. This same firm also began demonstrating the inefficiencies of a monopoly service provider.

Meanwhile, the northern two-thirds of the county continued to be served by numerous small firms. Similar to many Suffolk operators, public transportation was only a limited percentage of the business of the northern Westchester firms, which were primarily school transportation contractors.

During the 1979-1983 contract period, the Westchester system grew in a number of ways as the county exercised greater control over services, fares, capital equipment, and operating expenses. Service was increased several times, particularly local service in the northern part of the county, express bus service in 1982, and the paratransit system for elderly and disabled in 1983. As shown in Table C-1, service grew 57% over the five years while ridership grew 29% to nearly 28 million from a low of 21 million in 1976. Thus, the county system of private operators proved effective in attracting more ridership although service growth was almost twice passenger growth.

As service and ridership grew, so did operating expenses and the accompanying deficit. The privately operated system held expense increases to moderate levels through 1982; cost per vehicle hour increased 10.5% per year. In 1983, the major Westchester operator executed a labor agreement that provided substantial wage and fringe benefit increases, bringing it to parity with regional public operators. 1983 was also the first full operational year of the central maintenance facility, whose lease cost became part of the operating budget. Total operating costs jumped 18% that year and 15% in 1984. Such increases were the product of the two factors noted above: expanding services, especially the new $1 million paratransit service in 1984, and the significant growth of county administrative costs.

TABLE C-1
TOTAL WESTCHESTER SYSTEM
LONG-TERM TREND

| | CY 1978 | CY 1980 | CY 1981 | CY 1982 | CY 1983 | AVE. ANNUAL % CHANGE 1978-83 |
|---|---|---|---|---|---|---|
| PERFORMANCE DATA | | | | | | |
| Total Rev. Pass. (m) | 21.677 | 26.678 | 27.562 | 27.751 | 27.876 | 5.7% |
| Rev. Pass. (m) | 20.399 | 24.238 | 25.204 | 25.114 | 25.119 | 4.6% |
| Rev. Transfers (m) | 1.278 | 2.44 | 2.358 | 2.637 | 2.757 | 23.1% |
| Rev. Vehicle Mi. (m) | 6.183 | 7.156 | 7.759 | 8.53 | 9.72 | 11.4% |
| Rev. Vehicle Hr. (m) | 0.52 | N/A | 0.644 | 0.672 | 0.721 | 7.7% |
| Employees | 510 | 573 | 595 | N/A | N/A | |
| Employee Hours (m) | N/A | N/A | N/A | N/A | N/A | |
| Vehicles - Total | 231 | 235 | 302 | 262 | 313 | 7.1% |
| - Peak | | 224 | | | 269 | |
| Pass. Revenue (m) | N/A | 12.022 | N/A | 17.325 | 18.181 | |
| Operating Revenue (m) | 9.985 | 12.242 | 14.303 | 17.966 | 19.13 | 10.3% |
| Total Oper. Cost (m) | 14.5 | 20.27 | 23.518 | 26.561 | 31.283 | 23.1% |
| Operating Cost (m) | | 19.779 | 23.119 | 26.052 | 30.392 | |
| Profit (m) | | 0.705 | 0.613 | 0.056 | 1.246 | |
| Less: Depreciation (m) | | -0.214 | -0.214 | -0.347 | -0.355 | |
| Operating Deficit (m) | 4.515 | 8.028 | 9.215 | 8.595 | 12.153 | 33.8% |
| PERFORMANCE INDICATORS | | | | | | |
| Cost Efficiency | | | | | | |
| Cost/Veh. Mile | 2.35 | 2.83 | 3.03 | 3.11 | 3.22 | 7.4% |
| Cost/Veh. Hour | 27.88 | | 36.52 | 39.53 | 43.39 | 11.1% |
| Veh. Mile/Emp. Hour | | | | | | |
| Veh. Hour/Emp. Hour | | | | | | |
| Service Effectiveness | | | | | | |
| Pass./Vehicle Mile | 3.51 | 3.73 | 3.55 | 3.25 | 2.87 | -3.6% |
| Pass./Vehicle Hour | 41.69 | | 42.80 | 41.30 | 38.66 | -1.5% |
| Cost Effectiveness | | | | | | |
| Operating Rev./Cost | 0.69 | 0.60 | 0.61 | 0.68 | 0.61 | -2.2% |
| Cost/Passenger | 0.67 | 0.76 | 0.85 | 0.96 | 1.12 | 13.6% |
| Pass. Revenue/Pass. | | 0.45 | | 0.62 | 0.65 | |
| Deficit/Passenger | 0.21 | 0.30 | 0.33 | 0.31 | 0.44 | 21.9% |

The recent cost growth has diminished Westchester's long-held performance preeminence. The privately operated system has experienced steady cost increases to where in 1984, its cost per vehicle hour for local service was greater than a peer

group of national suburban systems. (see Table C-2). This development occurred because of Westchester's labor agreements paralleling those of the New York City systems, because of the steady loss of the characteristics of the private sector such as capital at risk and productivity and performance incentives, and because of the protection provided by permanent state operating franchises. Therefore, while Westchester has solved many of the problems of a contracted, privately operated system, it also illustrates the difficulties in delivering efficient and effective transit service where a private sector near-monopoly exists.

## II. INFLUENCE OF CAPITAL INVESTMENTS AND POLICIES ON PRIVATE SECTOR INVOLVEMENT

In providing public transportation services through the private sector, Westchester has benefitted from the state and federal grant programs but has not taken full advantage of them. Westchester utilized grants from the state and the Port Authority of New York and New Jersey to secure new vehicles as early as 1970. These vehicles were then leased to the private operators contracting with the county. However, Westchester did not take full advantage of the capital grants program available for maintenance facilities.

### A. VEHICLE PURCHASES

After the state-funded bus purchases of the early 1970's, Westchester secured its first federal capital grant in 1976 for 105 local service buses. These vehicles, delivered in 1978, were equipped with lifts and kneeling features to accommodate elderly and handicapped passengers. Unfortunately, it was over six months before these vehicles entered service. Two items holding up utilization were numerous assembly defects and disagreement with the private operators over appropriate lease durations. The operators wanted longer leases to justify the acquisition of parts inventories and investment in mechanics training, while the county wanted shorter leases to facilitate shifting vehicles away from unsatisfactory operators. The leases were eventually executed for the same period as the purchase of service contracts.

Westchester's policy of securing transit vehicles with capital grants and then leasing them to the private operators has led to a greater utilization of federal formula capital assistance and the preservation of operating assistance by not paying lease costs for transit vehicles. In 1984, only the paratransit vehicles, express buses to New York City, and 5% of the local fleet were owned by the operators and leased to county service. A profile of the county's fleet is presented in Table III.

Westchester was one of the first systems in the U. S. to meet its federal Section 504 requirements with lift-equipped buses. Unfortunately, the hydraulic lifts were among the first production models and developed serious mechanical problems, generating excess maintenance costs. The county obtained supplemental operating assistance from the state to solve this problem in 1983 and also decided not to obtain lifts on its subsequent purchase of 60 articulated buses. In order to meet its Section 504 requirements, the county in 1983 put out a bid for paratransit services. Contracts were awarded to local firms. Hence, the resolution of a capital equipment failure and a federal mandate was achieved through the use of additional private operators.

TABLE C-2

PEER COMPARISON
LARGE SUBURBAN SYSEMS

| | National Peer Group | | | MSBA | | | Liberty Lines | | |
|---|---|---|---|---|---|---|---|---|---|
| | 1982 | 1983 | % Change 1982-83 | 1982 | 1983 | % Change 1982-83 | (Local) 1982 | (Local) 1983 | % Change 1982-83 |
| **Cost Efficiency** | | | | | | | | | |
| Cost/Veh. Mile | 2.89 | 3.08 | 6.6 | 3.94 | 4.06 | 2.9 | 3.45 | 3.58 | 3.8 |
| Cost/Veh. Hour | 38.29 | 42.88 | 12.0 | 41.49 | 42.50 | 2.4 | 40.78 | 44.42 | 8.9 |
| Veh. Mile/Emp. Equiv. | 13,674 | 14,138 | 3.4 | 8,603 | 8,779 | 2.0 | 12,217 | 12,702 | 4.0 |
| Veh. Hour/Emp. Equiv. | 1,037 | 1,045 | .8 | 818 | 838 | 2.4 | 1,033 | 1,023 | -1.0 |
| **Service Effectivess** | | | | | | | | | |
| Pass./Veh. Mile | 2.89 | 2.91 | .7 | 3.18 | 3.31 | 3.8 | 3.87 | 3.61 | -6.8 |
| Pass./Veh. Hour | 37.44 | 39.17 | 4.6 | 33.50 | 34.61 | 3.3 | 45.83 | 44.82 | -2.2 |
| **Cost Effectivess** | | | | | | | | | |
| Oper. Rev./Cost | .39 | .37 | -5.1 | .49 | .48 | -1.3 | .71 | .61 | -11.3 |
| Cost/Pass. | 1.23 | 1.29 | 4.9 | 1.24 | 1.23 | -.8 | .89 | .99 | 11.4 |
| Pass. Rev./Pass. | .39 | .38 | -2.6 | .58 | .57 | -.9 | .63 | .60 | -4.7 |
| Deficit/Pass. | .81 | .87 | 7.4 | .63 | .64 | .4 | .26 | .38 | 49.8 |

Table C-3

## WESTCHESTER COUNTY BUS FLEET MAKE-UP

| | GENERAL ROSTER | | | CATEGORIZATION BY BUS TYPE AND OWNERSHIP | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 |
| Company | Peak Requirement | Spares | Total Required Fleet (1+2) | County-Owned 60' Artics | County-Owned 35' ADBs | County-Owned 40' ADBs | County-Owned 40' New Looks | County-Owned 28' Mini-Buses | Total County-Owned Buses (4+5+6+7+8) | Privately-Owned 40' New Looks | Privately-Owned 40' Suburbans | Privately-Owned Vans | Total Privately Owned Buses (10+11+12) | Total Fleet (9+13) |
| Beechmont | 2 | 0 | 2 | 0 | 2 | 0 | 0 | 0 | 2 | 0 | 0 | 0 | 0 | 2 |
| Bronxville | 1 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 1 |
| County | 1 | 1 | 2 | 0 | 1 | 0 | 0 | 1 | 2 | 0 | 0 | 0 | 0 | 2 |
| Dobbs Ferry | 2 | 1 | 3 | 0 | 0 | 0 | 0 | 3 | 3 | 0 | 0 | 0 | 0 | 3 |
| Hartsdale | 8 | 2 | 10 | 0 | 2 | 0 | 0 | 7 | 9 | 1 | 0 | 0 | 1 | 10 |
| Liberty | 208 | 48 | 256 | 61 | 0 | 72 | 75 | 0 | 208 | 17 | 31 | 0 | 48 | 256 |
| Mount Kisco | 34 | 10 | 44 | 0 | 13 | 12 | 13 | 0 | 38 | 0 | 6 | 0 | 6 | 44 |
| PTLA | 2 | 1 | 3 | 0 | 0 | 0 | 0 | 3 | 3 | 0 | 0 | 0 | 0 | 3 |
| White Plains* | 1 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 1 |
| Sub-Total | 259 | 63 | 322 | 61 | 20 | 84 | 88 | 14 | 267 | 18 | 37 | 0 | 55 | 322 |
| Medi-Cab ** | 16 | 0 | 16 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 16 | 1 | 16 |
| TOTAL | 275 | 63 | 338 | 61 | 20 | 84 | 88 | 14 | 267 | 18 | 37 | 16 | 71 | 338 |

* White Plains Bus Company does not receive Operating Assistance from Westchester County, but does lease an RTS bus from the County.

** Medi-Cab provides paratransit services to disabled Westchester County residents.

## B. OTHER CAPITAL ACQUISITIONS

The most innovative recent capital investment of WCDOT is a $2.6 million Vehicle Locator System. This device, utilizing transponders mounted on utility poles throughout the county, permits both WCDOT and its major operator to monitor service performance without street supervisors. WCDOT can thus enforce its contract penalties regarding service disruptions.

The acquisition of 267 new buses accentuated Westchester's inadequate maintenance and storage facilities. From 1970, when the county became involved in public transportation coordination and vehicle replacement, until 1982, when the central maintenance facility was opened, the county relied on the maintenance facilities of the contracted private operators. As Suffolk is now realizing, such a policy results at best in non-uniform maintenance and at worst in the neglect of equipment which the private operator does not own.

The inadequate facilities, inability to monitor maintenance, and the 1978 delivery of 105 new buses led the county to address the problem. The new buses were stored outdoors both while they were awaiting deployment among recipient operators and after they were put in use. Consequently, UMTA expressed concern about deterioration through exposure to vandalism and inclement weather and pressured WCDOT to provide more adequate facilities. New facilities had been deferred in Westchester's first federal application in 1976, but included in a 1978 application; state funding for a 10% share of costs was first provided in 1975. In 1978, WCDOT did not have sufficient federal formula Section 5 funds available to either construct or rehabilitate a facility and would have needed a Section 3 discretionary grant. Instead, the chief executives of two major Westchester operators proposed in September, 1979, to secure the land, buildings, and financing necessary for a centralized facility through a real estate subsidiary. The real estate firm would lease the facility to the county at a negotiated rate commensurate with the prevailing market. The county would then lease the facility back to the operator at a nominal amount. Central to this arrangement was an agreement by the county to a ten-year lease and a merger among the four largest operators.

In its decision process, the county considered the lengthy federal and state grants process for capital facilities (then estimated to be 4 to 5 years), the immediate need for secure storage and adequate maintenance for the new vehicles, and the discretionary nature of UMTA Section 3 grants. The County Board of Legislators chose the construction plans of the private operator in 1980 and thus ignored the capital grants process which could have provided federal and state funds for 90% of the total cost. Through this decision, the county committed itself to a 20 year lease with annual payments of $2.3-$2.5 million. The county also became responsible for the central maintenance facilities' utility costs and annual payments to the City of Yonkers in lieu of taxes of $800,000. The latter could be considered typical contracting business expenses which could have been included in any transit system's expenses, but the lease cost is atypical of public transit systems, although frequently found in contracts with private operators.

The total cost of the 20 year lease is $46.8 million, which is part of the operating costs of the Westchester system. As part of the system's net deficit, the lease cost is subsidized primarily through local assistance and to a lesser degree (20%) with state operating subsidies. If federal and state capital grants had

been utilized to rehabilitate the facility, non-local sources would have provided up to 90% of the total cost; the county would own the facility; and scarce state and local operating aid could be directed to transit services. It bears noting here that at the end of the 20 year lease, Westchester will not own the facility but must re-negotiate the lease with the private operator's real estate firm or find other facilities.

Westchester chose this private financing mechanism to construct the $17 million facility because of the time constraints it was confronting, the uncertainty of the discretionary Section 3 grants, and the then amply available operating assistance. Contracting with a private operator offered the county an option not available to public systems. Nontheless, this methodology committed the county to substantial, and essentially unnecessary, local operating aid over 20 years.

## C. REHABILITATION OF RAIL COMMUTATION

The other major effect of capital policy on Westchester's public transportation concern intercounty commutation, not local transit. Commuter rail has long been the preferred mode for county residents working in New York City. Westchester's commuters have benefitted indirectly from their geographic location astride two major intercity rail lines (New York to Montreal and New York to Boston) in that passenger and freight service on these lines helped pay for the construction and maintenance of the right-of-way used by commuter services. The population density and per capita wealth of Westchester riders allowed commuter rail service to operate without subsidy for many years. Eventually, however, this service fell victim to the same trends affecting rail passenger service throughout the U. S., declining ridership and increasing costs, such that government subsidies were necessary to maintain operations. In the reorganization following the Penn Central financial collapse, the three Westchester commuter lines were placed under Conrail operations.

Conrail, however, was interested in freight operation, not passengers. During the 1970's, therefore, the capital equipment used in commuter rail operations in Westchester deteriorated. Congress finally mandated that Conrail drop its passenger operations. Through the combined efforts of NYSDOT and the Metropolitan Transportation Authority (MTA), a new public corporation, Metro-North Commuter Rail, was formed to run the Westchester service. Metro-North took over the commuter lines on January 1, 1983.

Fortunately, Westchester's Transportation Commissioner and NYSDOT had already recognized the need to resume maintenance of the commuter lines' capital equipment. In the late 1970's, a project to electrify the central, most heavily used line to the northern limit of significant commutation was initiated. For some Westchester commuters, however, this was too little and too late to arrest the deterioration in service quality. These people began riding express buses from northern Westchester to New York City. While such services had operated sporadically in the 1960's and 1970's, they resumed in earnest in mid-1982. The following spring, Metro-North employees went on strike, taking advantage of federal railway labor legislation exempting them from the no-strike provision of New York's Taylor Law. The demand for commuter express bus service increased immediately. The strike lasted about five weeks. This was long enough to convince additional commuters to continue bus patronage after the strike ended. At

the peak of popularity, however, commuter express buses from Westchester to New York City attracted only 5% of the approximately 55,000 daily commuter rail passengers.

Due largely to the significant capital funds which have been committed by the federal, state and local governments to rehabilitate commuter rail service from Westchester to Manhattan, it remains the basic policy of NYSDOT and the MTA that commuter rail is the preferred commuting mode.

## III. INFLUENCE OF THE FEDERAL AND STATE OPERATING ASSISTANCE PROGRAMS

### A. FACILITATING PUBLIC/PRIVATE DECISION

By the time Westchester began serious consideration of the need to systematize and subsidize its public transportation services in 1974 and 1975, state and federal operating subsidies with provisions to fund private sector operations were available. Westchester, therefore, had greater freedom to exercise its institutional preference than Onondaga. In spite of divergent institutional patterns, however, both the predominantly public sector operations in Onondaga and other upstate urbanized areas and the predominantly private sector operations in Suffolk and Westchester have a continuing need for federal and state operating assistance.

The Westchester public transit system has one of the highest ratios of revenues to expenses of similar systems nationally, although it has declined sharply in recent years. Despite an average cover ratio of .60, achieved in part through the use of private operators, however, the system continues to require federal, state, and local subsidies. Federal and state operating assistance accounted for 34%-37% of total system expenses during the period 1983-1985 as shown on Table C-4. By virtue of Westchester's inclusion in the New York City urbanized area, it receives substantially less Federal formula operating aid than other systems its size due to the local distribution formula for Federal aid. The proportion of Westchester's budget covered by federal aid has ranged from 0% in 1984 to 9% in 1985. Cutbacks in federal aid have necessitated a fare increase to 90¢ and increases in state aid. Further cutbacks would necessitate service curtailments or enhanced local aid.

The use of operating subsidies to fund its contracts with the private operators allowed Westchester to continue and subsequently expand its transit services without an immediate infusion of large scale capital funds. When 80% federal capital aid became available in 1975, the county acquired new vehicles with federal and state funds and leased them at nominal cost to its contractors, thereby preserving operating funds for operational costs. Since 1975, most of the peak fleet vehicles have been provided to the private operators in this manner.

## B. SUBSIDIZING COMMUTER SERVICE

In conjunction with Westchester and Metro-North, NYSDOT has developed criteria regarding the eligibility of intercounty commuter bus service for state operating subsidies. This is particularly relevant for Westchester, where approximately 55,000 people commute to New York City daily. Given the MTA's capital commitment to Metro-North for rehabilitation of stations and right-of-way and for new rolling stock, Westchester County, the MTA, and NYSDOT have agreed that, wherever possible, commuter rail will be the preferred subsidized mode for New York City commuters. This policy precludes state operating assistance to commuter bus service judged duplicative of commuter rail. While the capital and operating costs of commuter buses are less than commuter rail, the volume of traffic in these three rail corridors, the fact that the rail lines have long been in place, and objections to increasing the number of buses in downtown New York City are the basis for the preference given to commuter rail. Furthermore, the limited availability of state assistance has necessitated limiting subsidized transit service in a corridor to a single mode.

TABLE C-4

COMPARATIVE FINANCIAL INFORMATION CFY 1983-1986
WESTCHESTER COUNTY
(Millions of Dollars)

| OPERATING EXPENSES | 1983 ACTUAL | | 1984 ACTUAL | | 1985 ESTIMATE | | 1986 ESTIMATE |
|---|---|---|---|---|---|---|---|
| Salaries & Wages | 14.490 | | 16.579 | | 18.532 | | 18.751 |
| Fringe Benefits | 3.405 | | 5.325 | | 4.249 | | 4.448 |
| Services | 2.285 | | 1.506 | | 0.548 | | 0.586 |
| Fuel & Lubricants | 3.017 | | 3.468 | | 3.072 | | 3.093 |
| Other Materials & Supplies | 3.581 | | 3.800 | | 3.547 | | 3.883 |
| Utilities | 0.667 | | 0.742 | | 0.884 | | 0.895 |
| Casualty & Liability Costs | 0.502 | | 0.764 | | 1.546 | | 2.105 |
| Taxes | 1.186 | | 0.388 | | 0.479 | | 0.468 |
| Interest Expense | 0.010 | | 0.006 | | 0.000 | | 0.000 |
| Leases & Rentals | 0.918 | | 0.847 | | 1.084 | | 0.834 |
| Expense Transfers | 0.329 | | 0.110 | | 0.000 | | 0.000 |
| Miscellaneous Expense (Includes Profit) | 1.263 | | 2.416 | | 2.237 | | 3.509 |
| Private Capital Depreciation | 0.355 | | 0.304 | | 0.233 | | 0.191 |
| TOTAL OPERATING EXPENSES | 32.008 | 13.3% | 36.255 | 0.4% | 36.411 | 6.5% | 38.763 |

COMPARATIVE FINANCIAL INFORMATION CFY 1983-1986
WESTCHESTER COUNTY
(Millions of Dollars)
(Cont.)

| | 1983 ACTUAL | | 1984 ACTUAL | | 1985 ESTIMATE | | 1986 ESTIMATE |
|---|---|---|---|---|---|---|---|
| REVENUES | | | | | | | |
| Operating Revenues | | | | | | | |
| Passenger Revenues | 18.173 | | 19.217 | | 21.413 | | 20.974 |
| Special Reimbursements | 0.680 | | 0.434 | | 0.000 | | 0.000 |
| Charter Svc. Revenues | 0.033 | | 0.000 | | 0.000 | | 0.000 |
| Non-user Revenues | 0.179 | | 0.169 | | 0.002 | | 0.000 |
| Total Operating Revenues | 19.065 | 4.0% | 19.820 | 8.0% | 21.415 | -2.1% | 20.974 |
| Subsidies | | | | | | | |
| Federal Aid | | | | | | | |
| Section 5/9 | 2.186 | | 0.000 | | 3.257 | | 1.740 |
| Section 18 | 0.000 | | 0.000 | | 0.000 | | 0.000 |
| Other | 0.000 | | 0.000 | | 0.000 | | 0.000 |
| Subtotal | 2.186 | | 0.000 | | 3.257 | | 1.740 |
| State Aid | | | | | | | |
| Section 18-b | 1.520 | | 1.633 | | 1.544 | | 1.752 |
| Dedicated Taxes | 7.997 | | 10.689 | | 8.238 | | 7.654 |
| Supplemental | 0.000 | | 0.000 | | 0.000 | | 0.000 |
| Subtotal | 9.517 | | 12.322 | | 9.782 | | 9.406 |
| Local Aid | | | | | | | |
| Section 18-b | 1.703 | | 1.633 | | 1.544 | | 1.458 |
| Voluntary | 1.251 | | 2.480 | | 0.413 | | 5.185 |
| Other | 0.000 | | 0.000 | | 0.000 | | 0.000 |
| Subtotal | 2.954 | | 4.113 | | 1.957 | | 6.643 |
| Total Subsidies | 14.657 | 12.1% | 16.435 | -8.8% | 14.996 | 18.6% | 17.789 |
| TOTAL REVENUES | 33.722 | 7.5% | 36.255 | 0.4% | 36.411 | 6.5% | 38.763 |
| SURPLUS (DEFICIT) | 1.714 | | 0.000 | | 0.000 | | .000 |
| REVENUE PASSENGERS | 27.876 | | 30.034 | | 28.553 | | 28.287 |
| REVENUE VEHICLE MILES | 10.832 | | 11.934 | | 8.900 | | 9.069 |

## IV. CONSIDERATION OF THE OPERATING ENVIRONMENT

Currently, the demand for transit service continues to grow in Westchester stimulated by population and employment increases. The electrification of the Harlem branch of Metro-North has increased the popularity of this commuter mode, thus stimulating feeder service to rail stations along this line. Additionally, numerous employment centers in the northern part of the county are stimulating transit service, though a few corporations are so status conscious as to discourage commutation by public transportation.

Although Westchester has continued to resist the public authority institutional structure as a means of administering its system, WCDOT's staff has grown as it has assumed more of the functions of operating a transit system. WCDOT now administers an insurance program for the smaller operators, does marketing and public information functions for the entire system, monitors performance through its Vehicle Locator System, applies for and administers capital grants, and audits the records of contracted operators.

A major function of WCDOT is the annual negotiation with one major and nine other contractors over service levels, maximum expense levels, and profit level or, as currently titled, management fees. Westchester has taken great pride in recent years in pointing to the economy and efficiency of its operation when compared nationally and even within the state to public sector operations in like demographic and economic situations. However, considering how little private capital is currently at risk among Westchester's private firms, it is worth considering the peer comparison trends. Westchester has lost some advantages of private sector operations by making the contract conditions of its private operators too secure. Contributing to this is the permanent operating franchises of the private operators, which hinders the county from negotiating with other carriers for necessary service. In fact, Westchester's operators are now primarily private transit management firms. The lack of competition among county operators and the insulation from competitive outside operators have contributed to this development. One rebuttal is that public transportation is too vital a public service not to leave operations in a secure financial position, which is the perception of many of transit's public monopolies, the regional authorities.

## V. EFFECT OF THE CHANGING REGULATORY ENVIRONMENT

Westchester's public transportation service has been affected only minimally by the federal deregulation of interstate bus service and hardly at all by the 1984 easing of state regulations. The privately provided local system has not been materially impacted. Private operators in Westchester have made numerous attempts in recent years to serve the commuter market to New York City; NYSDOT has closely monitored this market through both its Regulation and Transit Divisions. Regulation has restricted entry to this market while Transit has restricted the operators who could receive subsidy through its policy on duplication of services. Regulation lost an entry prohibition when a carrier received permission from the Interstate Commerce commission to use a route from northern Westchester which traverses a four mile section of Connecticut and was thus ruled outside the jurisdiction of NYSDOT. Transit's policy prohibiting subsidy of duplicative services has led to one carrier's retiring from the commuter market.

For a summary of Appendix C, see Chapter III.

APPENDIX D -- SUFFOLK CONTRACT

Agreement Number
01-5643-498-66-00006

MASS TRANSPORTATION OPERATING ASSISTANCE AGREEMENT
1986

THIS AGREEMENT is between the COUNTY OF SUFFOLK ("County"), a municipal corporation of the State of New York, and

DEF, Inc.

("Carrier").

The parties hereto desire to make available to the County of Suffolk mass transportation services in return for State operating assistance pursuant to Section 119-r of the General Municipal Law and sufficient funding exists in the 1986 Suffolk County Operating Budget.

TERM OF AGREEMENT: Shall be January 1, 1986 through December 31, 1986.

TOTAL COST OF AGREEMENT: Is estimated not to exceed $6,900.00.

TERMS AND CONDITIONS: Shall be as set forth in Exhibit(s) "A", "B", "C", "D", "E", "F", "G", "H" which are attached.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the latest date written below.

| CARRIER | COUNTY OF SUFFOLK |
|---|---|
| _____ | _____ |
| TITLE: | Deputy of Suffolk County Executive |
| DATE: _____ | DATE: _____ |
| APPROVED AS TO FORM:<br>NOT REVIEWED AS TO EXECUTION | APPROVED: |
| _____ | _____ |
| County Attorney | Director of Transportation Operations |
| DATE: _____ | DATE: _____ |

MTOA
EXHIBIT A

WITNESSETH

WHEREAS, pursuant to Section 119-r of the General Municipal Law, the County is authorized to adopt local laws to assure the provision of mass transportation services to the public at adequate levels and at a reasonable cost; and

WHEREAS, the County Legislature adopted Local Saws Nos. 25-1974, 15-1979 and 16-1980 pursuant to Section 119-r of the General Municipal Law; and

WHEREAS, Section 18-b of the Transportation Law and Section 88-a of the Finance Law provide for a Statewide Mass Transportation Operating Assistance Program (hereinafter referred to as the "Program"); and

WHEREAS, the Commissioner of Transportation of the State of New York has promulgated Part 975 of Title 17 of the Official Compilation of codes, Rules and Regulations of the State of New York pursuant to which the Program authorized by Section 18-b of the Transportation Law of the State of New York is to be effectuated; and

WHEREAS, the County is desirous of encouraging mass transportation in the County of Suffolk as being in the best interest of the County; and

WHEREAS, the Carrier is the owner of and operating a bus system in Suffolk County;

NOW, THEREFORE, IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

1.0 Maintenance of Fares

1.1 The Carrier agrees to maintain the bus fares along its described routes at existing fare levels unless a modification of fares is authorized by the New York State Department of Transportation pursuant to Section 142 of the New York State Transportation Law and Parts 730, 731 and 732 of Title 17 of the New York Codes, Rules and Regulations.

1.2 The current fare schedule(s) shall be as described in Exhibit B of this Agreement. The fare schedule shall describe the full fare and any reduced fare or special fares applicable to the routes in Exhibit B. In the even of any change in said Exhibit B, the Carrier shall immediately provide a copy of the change to the Department.

1.3 Any request to the Regulatory Division of the State Department of Transportation by the Carrier for a change of fare on any route described in Exhibit B shall simultaneously be forwarded to the Department along with any accompanying data.

2.0 Maintenance of Route Service

2.1 The Carrier agrees to maintain service along the route(s) described in Exhibit C of this Agreement.

2.2 Any changes in the route(s) described in Exhibit C, or any proposed route addition or deletion must first be forwarded to the Department in writing. Upon review and approval in writing by the Department, the request for the change in route(s) may then be forwarded to the New York State Department of Transportation's Regulatory Division.

2.3 Any modification(s) of said route(s) may ultimately only be made with the approval of the New York State Department of Transportation. A copy of the New York State Department of Transportation Order authorizing the route modification(s) must be submitted to the Department within twenty days of said Order, accompanied by a petition for local consent to the Suffolk County Legislature for the subject route modification(s) unless not required by the Order.

3.0 Maintenance of Schedules

3.1 The Carrier agrees to maintain the operating schedule(s) described in Exhibit C of this Agreement. Said schedule(s) must clearly state days not in service such as Sundays or holidays, said holidays being clearly defined. Seasonal variations must be defined, as well as the effective begin and end dates of said seasonal service.

3.2 Any permanent change in the operating schedules described in Exhibit C must be forwarded to the Department in writing and must have approval in writing from the Department prior to the implementation of the change. Emergency changes in the operating schedule shall be reported pursuant to paragraph 5.2.

3.3 In addition, notification of the operating schedule change(s) to the New York State Department of Transportation must be accomplished as provided by the New York State Department of Transportation Order dated June 25, 1974. A copy of said notification must be provided to the Department.

4.0 Operating Assistance Payments for Maintenance of Fares

4.1 In consideration for maintenance of such fares at existing levels, the County agrees to grant the Carrier funds received by the County pursuant to the Program, and distributed in accordance with the requirements of the Program.

4.2 The amount which the Carrier shall be paid for the maintenance of fares shall be the result of the current New York State formula as applied to revenue passengers, including passengers paying cash or utilizing tokens or transfers authorized by the Department, and vehicle miles in revenue service for the preceding quarter and shall be subject to the availability of State Program funds. The definitions of revenue passenger and revenue vehicle mile are contained in Exhibit D of this Agreement. If there is a change made by the State in such definitions, Exhibit D will be modified to reflect such change(s).

4.3 Utilizing the route(s) and schedule(s) as described in Exhibit C, revenue daily mileages will be determined. These mileages are described in Exhibit E and are hereby made part of this Agreement. Under normal operating

conditions, total revenue service for a month will thus be a multiple of the daily mileages for the number of days operated per month. The utilization of normal daily mileages in Exhibit E does not relieve the Carrier from the responsibility of reporting the actual revenue vehicle miles in the event of an operating schedule change pursuant to paragraphs 3.2 and 3.3 or cancellation or addition of scheduled runs due to emergency changes. The Carrier shall notify the Department in writing pursuant to paragraph 5.1 of such change and appropriate adjustments shall be made to revenue mileage reported for the month(s).

4.4 Operating statistics attributable to a new or extended route will commence on the effective date of the New York State Department of Transportation Regulatory Division Order. Operating statistics for a route reduction or deletion will cease being accepted as of the date of reduced or deleted service regardless of whether or not an Order has been issued.

4.5 Part of the funds to be paid by the County under this agreement are State funds. If for any reason the State shall fail to provide full State aid under the Program to the County for payment due hereinafter to the Carrier or should this program be discontinued by the State, no liability on account of this agreement shall be incurred by the County beyond the monies available for the purpose thereof, and the Carrier shall refund to the county any County payment to the extent not fully State funded.

4.6 The amount which the Carrier shall be paid for the maintenance of fares at existing levels pursuant to the Program shall not exceed $6,900.00 for the period of this Agreement. Said amount may only be exceeded in the event of an approved modification of operating statistics pursuant to the provisions of Paragraphs 2.2, 2.3, 3.2, 3.3, or 4.1, 4.3, 4.4 of this Agreement, or in the event that additional monies are received from the State pursuant to the provisions cited in Paragraphs 4.1 and 4.2 of this Agreement.

5.0 Reporting

5.1 The Carrier shall file with the Department SC MTOA Form 01 "Quarterly Report for New York State Mass Transportation Operating Assistance", Exhibit F, which includes actual revenue passengers and the vehicle miles in revenue service pursuant to Paragraphs 4.2, 4.3 and 4.4 for the preceding quarter. The quarterly report, which must be signed and certified by the individual responsible for its submittal, shall be filed with the Department no later than ten (10) days after the close of each quarter (January 10, April 10, July 10, October 10). Failure to submit quarterly reports in writing by the aforementioned dates may result in the loss of an operating assistance payment for the following quarter.

5.2 The Carrier shall make the appropriate mileage adjustments on the Quarterly Report Form for any reduction in service occurring during the subject quarter that may have been causes by weather, breakdown, etc. Any additional mileage caused by overcrowding which necessitates an extra vehicle on a particular run, or for holiday service, may be reported on the form. Said adjustments must be indicated in the "Less or Additional Miles" line provided for on the form. Any adjustments to mileage herein described shall be explained in writing and forwarded to the Department at the time of submittal of the Quarterly Report Form.

5.3 The Carrier agrees to provide the County with any financial or statistical data that may be required by the Federal or State governments under the provision of the Urban Mass Transportation Act of 1964, as amended, or under the rules and regulations of the Program.

5.4 The Carrier agrees to provide the County, on a monthly basis, with a completed and signed County Form "Suffolk County Bus Improvement Program Monthly Statement: Passengers Carried/Fares Collected".

6.0 Reduced Fare Program

6.1 The Carrier agrees that to be able to participate in the Program, the Carrier will participate in the County Reduced Fare Bus Token Program and that the Department reserves the right to alter both the reduced fare groups, the implementation procedures and the reduced fare amount. The Carrier agrees to provide the bus service as described in Paragraphs 2.1 and 3.1 of this Agreement to eligible persons for a reduced fare. The only exceptions to the Carriers participating in the Reduced Fare Bus Token Program are those operating "commuter" or "express" type services, as determined by the Department.

6.2 Persons eligible for the reduced bus fare as well as the description of the required identification are determined by the County and communicated to the Carrier by the Department.

6.3 The Carrier agrees to accept valid Suffolk County Reduced Fare Bus Tokens from an eligible person for a one-way trip. Each additional bus or bus route used by the eligible reduced fare patron shall result in the collection of an additional Suffolk County Reduced Fare Bus Token except between those bus routes that have been included in a County designated transfer program.

6.4 The Carrier agrees to require the drivers of its buses to direct the reduced fare patron possessing a token to produce and exhibit to the driver of the bus valid identification prior to accepting the token. Eligibility will be determined as described in Paragraph 6.2 of this Agreement.

6.5 In consideration for same, the County agrees to pay the Carrier a flat reimbursement rate per token as described in Exhibit B of this Agreement. The amount which the Carrier shall be reimbursed for the previously described Reduced Fare Bus Token Program shall not exceed $0 for the period of this Agreement. Said reimbursement shall be subject to adjustment based on the actual number of Suffolk County reduced fare bus tokens received from the Carrier by the Department. Tokens other than those approved by the County for reduced fares will not be honored by the County for reimbursement purposes.

6.6 The County agrees to remit funds to the Carrier pursuant to the Reduced Fare Bus Token Program upon receipt of a claim in such form as prescribed by the County and after audit and approval by the County Comptroller. It is agreed that such claims are to be submitted by the Carrier on a monthly basis. Attached to said claim shall be a completed SC MTOA Form 02A containing a summary of tokens received by bus route for the subject month. The procedures for pick up of the tokens, receipting and county verification are determined by the County and communicated to the Carrier by the Department.

6.7 The reimbursement funds provided by the Reduced Fare Bus Token Program shall be a portion of the matching funds required by the State to be contributed by the County pursuant to the Program. It is expressly understood that the consideration which the Carrier received for maintenance of fares at existing levels shall be paid from available State funds and is a function of the matching amount of County funds available, howsoever the county determines to provide said matching funds.

7.0 Transfer Program

7.1 The Carrier agrees to participate in the County-designated passenger transfer program by issuing and accepting county transfers to fare-paying passengers on the bus routes described in Exhibit C of this agreement in accordance with such rules and regulations as the County may establish and/or modify from time to time. Unless otherwise mutually agreed between the County and the Carrier, the Carrier agrees that is sole compensation for participation in the program shall consist of revenues derived from the sale of transfers on bus routes specified in Exhibit C of this Agreement as well as any additional New York State Operating Assistance which may be derived pursuant to Paragraphs 4.2 and 5.1 of this Agreement as a direct result of Transfer passengers carried on those routes.

7.2 It is mutually agreed that during the period of this Agreement, the County and the Carrier will periodically monitor and evaluate the fiscal impact of the passenger transfer program on farebox and other revenues received by the Carrier from the operation of the affected bus routes.

8.0 Penalty

8.1 In the event that it shall be determined that the Carrier has intentionally overstated the actual revenue passengers or revenue vehicle miles for the preceding quarter(s), then the Carrier shall be liable for a repayment to the County for an amount equal to three times the excess operating assistance paid to the Carrier pursuant to Paragraphs 4.1, 4.2, 4.3, 4.4 and 4.5 of this Agreement.

9.0 Audit, Inspection and Monitoring

9.1 The Carrier agrees that it shall have all its books and records whether directly related to this Program or not available for audit and inspection by the County, and the State Commissioner of Transportation. The Carrier further agrees to permit representatives of the Department to board vehicles assigned to service(s) described in Exhibit C of this Agreement during hours of service, with or without prior notification to the Carrier, for the purpose of observing and/or monitoring Carrier compliance with terms and conditions of this Agreement and the Laws of the County and the State of New York as well as for the purpose of obtaining data from passengers and equipment. Upon boarding vehicles, Department employees shall display a County identification card to the driver and they shall ride fare-free when in performance of the above.

10.0 Records

10.1 The carrier further agrees to maintain its accounting records in compliance with the uniform system of accounts for bus corporations as prescribed by the State Commissioner of Transportation and contained in Article 7, Sub.

Chapter D of Chapter VI of Title 17, (part 760-777) of the New York Code of Rules and Regulations; and the Regulations for Reporting and Accounting Procedure for the Program Contractors as promulgated by the Commissioner and/or the County Comptroller (contained in Exhibit H of this Agreement).

11.0 Operational Requirements

11.1 The Carrier agrees for the consideration hereinafter provided to furnish adequate, qualified and trained personnel and equipment needed to operate and maintain a bus system.

11.2 The Carrier further agrees to cooperate with the Department, to the extent possible, in coordinating any rout and/or operating schedule modification(s) with the bus services provided in the area so as to maximize the effectiveness of all of the transit operations in the County.

11.3 The Carrier shall have available on each vehicle in service printed schedules for distribution on demand. Failure to provide such schedules may be cause for the Department to have schedules printed and the cost thereof deducted from the sums due the Carrier.

11.4 The Carrier agrees the drivers it provides will be uniformed when operating said vehicles. Uniforms are subject to Department approval.

12.0 Vehicles

12.1 The Carrier also agrees all vehicles shall meet all standards, rules and regulations as prescribed by State and Federal Law for their operation. Each vehicle shall be equipped with locked fareboxes as approved by the Department and overhead destination signs lettered to Department specifications. The Carrier shall provide for voice communication between Carrier's base of operations and driver at all times.

12.2 The Carrier shall maintain the capability of providing back-up equipment of similar type in the event of vehicle breakdown or other unforeseen disruption of services.

12.3 It is understood that in the event County-owned buses are furnished by the County to the Carrier for operation pursuant to this Agreement, the Carrier will maintain such County-owned buses in good working order and in a clean condition and appearance. The Carrier further understands that if such buses are provided, it will be required to maintain and repair such County-owned buses in strict accordance with such maintenance schedules and repair requirements, as the Department shall establish. The Carrier agrees to keep such records of maintenance, repair and use of the buses as may be required by the Department, and shall take out and maintain insurance for such buses in accordance with Paragraphs 14.1 through 14.7 of this Agreement.

13.0 Notice, Claim

13.1 Any communication, notice, claim for payment or other submission necessary or otherwise required to be made by the Carrier to the County, shall be deemed to have been duly made upon receipt by the County at an address specified

by the Department. Any communication, notice or other submission required to be made by the County to the Carrier shall be deemed to have been duly made upon the mailing by the County to the Carrier at the address of the Carrier specified in this Agreement.

14.0 Liability and Insurance

14.1 The Carrier agrees to indemnify and hold harmless the County of Suffolk, the County's consultant (if any), its agents, employees, or any other person against loss or expense including attorney's fees, by reason of the liability imposed by law upon the County, except in cases of the County's sole negligence, for damage because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons, or on account of damage to property arising out of or in consequence of this Agreement, whether such injuries to persons or damage to property are due or claim to be due to any passive negligence of the County, its employees or agents or any other person.

14.2 The Carrier shall take out and maintain automobile liability insurance in an amount not less that $1,000,000 combined single limit per occurrence for both bodily injury and property damage and shall take out and maintain general liability insurance in an amount not less that a combined single limit of $1,000,000 per occurrence for both personal injury and property damage, AND THE COUNTY MUST BE NAMED AS AN ADDITIONAL INSURED UNDER SUCH POLICIES. Certificates of all such policies shall be delivered to the Department pursuant to Paragraph 25.1 of this Agreement. The certificates shall indicate that the Department will receive 30 days' notice of cancellation or any change in the insurance coverage.

14.3 Carrier shall notify the County within twenty-four (24) hours in the event of an accident.

14.4 The insurance company used by the Carrier must be approved by the County and shall be licensed to do business in the State of New York. If at any time, any of said policies shall be or become unsatisfactory to the County, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the County, the Carrier shall promptly obtain a new policy, submit the same to the County for approval and submit a certificate thereof to the County as herein provided.

14.5 Upon failure of the Carrier to furnish, deliver and maintain such insurance as herein provided, this Agreement, at the election of the county, may be forthwith suspended, discontinued or terminated. Failure of the Carrier to take out and/or to maintain or the taking out and/or maintenance of any required insurance, shall not relieve the Carrier from any liability under the Agreement, nor shall the insurance requirements be construed to conflict with the obligations of the Carrier concerning indemnifications.

14.6 In the event that claims in excess of these amounts are filed by reason of any operations under this Agreement, the amount of excess of such claims, or any portion thereof, may be withheld from payment due or to become due the Carrier until such time as the Carrier shall furnish such additional security covering such claims as may be determined by the County.

14.7 Should any of the services provided for under this Agreement utilize County-owned vehicles assigned to the Carrier via a separate Lease Agreement between the County and the Carrier, then the Carrier agrees to assume responsibility for all risks of loss through physical damage, including collision and comprehensive losses to all County-owned vehicles pursuant to the terms of said Lease Agreement.

14.8 This contract shall be void and of no effect unless the Carrier shall secure Workmen's Compensation and Disability Benefits Insurance for the benefit of any and all employees required to be insured under the provisions of the workmen's compensation law in full compliance with the laws of the State of New York. Such insurance shall be maintained during the life of this contract. Certificates of all such policies shall be delivered to the Department pursuant to Paragraph 25.1 of this Agreement.

15.0 Termination of Agreement

15.1 In addition, if through any cause the Carrier fails to fulfill in a timely and proper amount its obligation herewith, or if the County shall deem it in its best interest to terminate this Agreement, or its obligation with respect to said Program, it shall have the right to do so by giving thirty (30) days' prior written notice by registered or certified mail to the Carrier return receipt requested. The Carrier may terminate this Agreement, at its option, by giving sixty (60) days' prior written notice to the County by registered or certified mail, return receipt requested.

16.0 Assignment

16.1 The Carrier is prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this contract, or of his right, title or interest herein, or his power to execute this contract, to any other person or corporation without the previous consent in writing of the County.

17.0 Compliance with Rules and Regulation

17.1 The Carrier agrees to comply with such rules and regulations as the County, Department and State may make from time to time pursuant to the law.

18.0 Non-Discrimination

18.1 The non-discrimination provisions contained in exhibit G, herewith, are made a part of this Agreement.

19.0 Independent Contractor

19.1 It is expressly agreed that the Carrier's status is herein that of an independent contractor. Neither the Carrier nor any persons hired by the Carrier shall be considered employees of the County for any purpose.

20.0 Arrears

20.1 The Carrier warrants that is is not in arrears to the County upon debt or contract and is not a defaulter as surety, contractor or otherwise on any obligation to the County.

21.0 Previous Understandings

21.1 It is understood that this instrument represents the entire Agreement of the parties thereto; and all previous understandings are merged herein; and that no modifications hereof shall be valid unless written evidence thereof shall be executed by the parties hereto charged.

22.0 Separability

22.1 If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and every other term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

23.0 Gratuities

23.1 The Carrier represents and warrants that he has not offered or given any gratuity to any official, employee or agent of Suffolk County, New York State, or of any political party, with the purpose or intent of securing favorable treatment with respect to the awarding or amending of an agreement, or the making of any determinations with respect to the performance of any agreement, and that the Carrier has read and is familiar with the provisions of Local Law 32-1980.

24.0 Public Disclosure Statement

24.1 The Carrier shall comply with resolution #471-1976 and submit a satisfactorily completed Form SCEX 22, "Public Disclosure Statement", for each whole or partial calendar year during which this contract remains in effect pursuant to the provisions of Paragraph 25.1 of this Agreement. Failure to so submit shall be cause for immediate cancellation of this contract without recourse on the part of the Carrier. Forms shall be supplied by the County.

25.0 Required Submittals

25.1 The Carrier shall submit the following documents by January 31st of each calendar year or in the case of a first time Agreement prior to the effectuation of that Agreement:

1) Certificates of automobile and general liability insurance pursuant to Paragraph 14.2 of this Agreement.

2) Certificates of Workmen's Compensation and Disability Benefits pursuant to Paragraph 14.8 of this Agreement.

3) Public Disclosure Statement (Form SCEX 22) pursuant to Paragraph 24.1 of this Agreement.

26.0 Term of Agreement

26.1 This Mass Transportation Operating Assistance Agreement shall become effective as of the 1st day of January, 1986 and shall terminate on the 31st day of December, 1986.

* * * * * * * * * *

END OF TEXT

MTOA
EXHIBIT B

DEF Fares: Y-22

ZONE 1 -- From the intersection of Great Neck Road and Merrick Road in Copiague to the intersection of Grand Avenue and Toledo Avenue in East Farmingdale.

ZONE 2 -- From the intersection of Grand Avenue and Toledo Avenue in East Farmingdale to the intersection of Edison Avenue in Straight Path in Wyandanch.

The following rate schedule is in effect:

| | |
|---|---|
| Between any two locations within a route | 20¢ |
| From a location within one zone to a location within a contiguous zone | 40¢ |

DEF, Inc.
Passenger Transfer Program

A five cent (5¢) fare for transfers will be charged on the following bus route: S-31.

* * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * *

DEF

Bus token reimbursement rate: NONE

D. E. F., INC.

Y-22

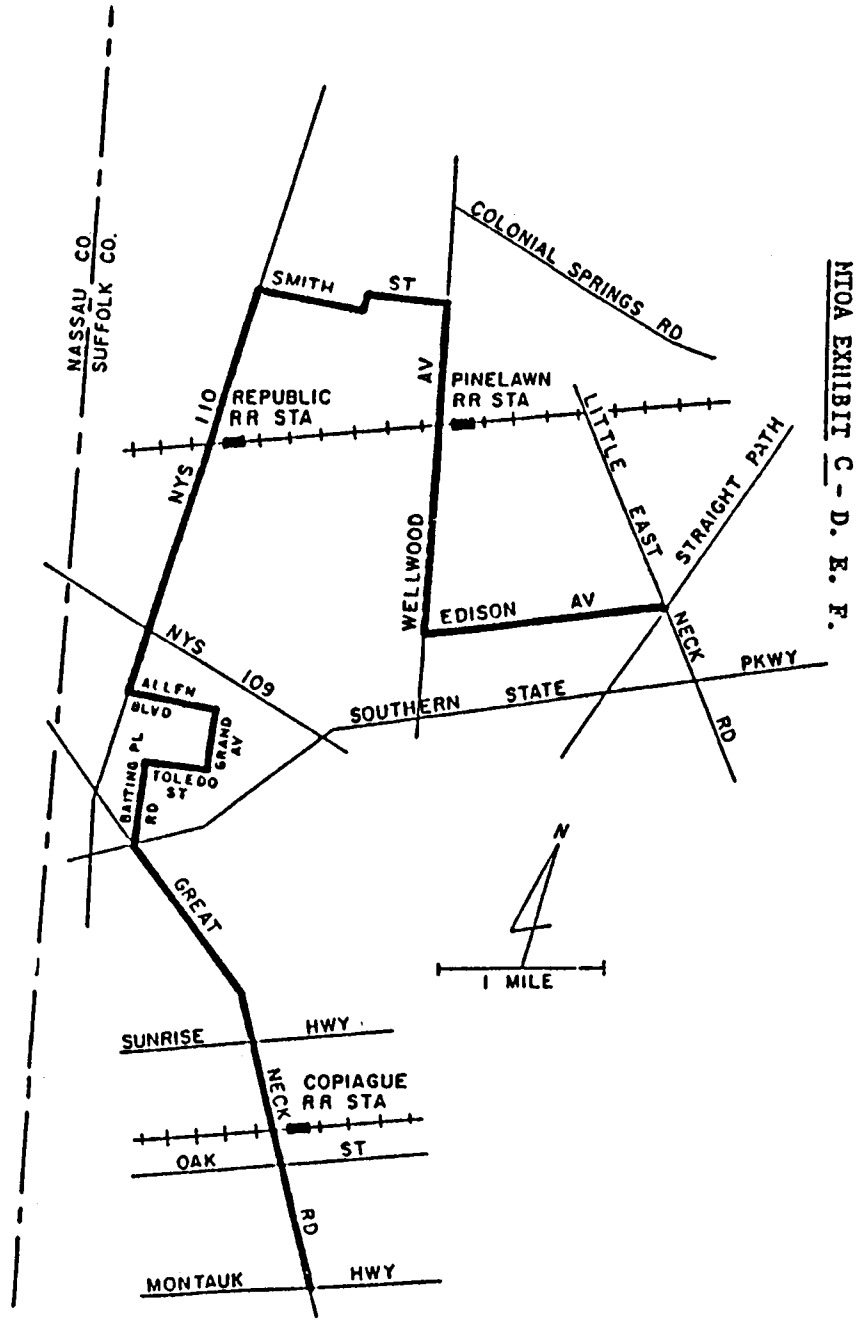
Phone 123-4567

NORTHBOUND

| | | |
|---|---|---|
| Merrick & Great Neck | 7:15 a.m. | 5:00p.m. |
| Great Neck & Sunrise | 7:21 | 5:06 |
| Allen Blvd. | 7:30 | 5:15 |
| Rte 110 & Conklin | 7:35 | 5:20 |
| Rte 110 & Smith St. | 7:40 | 5:25 |
| Pinelawn Railroad Station | 7:45 | 5:30 |
| Str. Path & Edison | 7:55 | 5:40 |

SOUTHBOUND

| | | |
|---|---|---|
| Str. Path & Edison | 8:00 a.m. | 4:15 p.m. |
| Pinelawn Railroad Station | 8:10 | 4:25 |
| Rte 110 & Smith St. | 8:15 | 4:30 |
| Rte 110 & Conklin | 8:20 | 4:35 |
| Allen Blvd. | 8:25 | 4:40 |
| Sunrise & Great Neck | 8:34 | 4:49 |
| Merrick & Great Neck | 8:45 | 5:00 |



MTOA
EXHIBIT D
DEFINITIONS

Revenue Passenger shall mean a person who is transported between an origin and destination, both of which are within New York State, by mass transportation services, for whom a per-passenger fare is collected by the public transportation system. This does not include persons who ride or transfer free onto or within the system except as noted below. Effective April 1, 1984, such per passenger fare or transfer fee (when combined with any voluntary local government fare subsidies) shall be at least thirty cents per rider (fifteen cents for the elderly, handicapped and the young) for those unspecified systems where the quarterly service payment is determined based on their quarterly revenue vehicle mile and passenger statistics. In those instances where the fare for a class of riders (e.g., elderly, disabled, students) is subsidized in whole or in part through a contract, the appropriate portion of this contract revenue must be considered farebox at a per-passenger rate commensurate with the established fare structure, in order for these riders to be considered passengers under this program.

Revenue Vehicle Mile shall mean the movement of one bus vehicle, ferryboat or rail care providing mass transportation services for a distance of one mile in revenue service. This shall include loca, commuter (initial and return trip). Revenue vehicle miles includes only those moles traveled by revenue vehicles while in revenue service. Excluded are vehicle miles traveled to and from storage and maintenance facilities, and other deadhead travel.

MTOA
EXHIBIT E
DEF

Vehicle miles in revenue service for the following route(s) are as indicated:

Y-22

| | |
|---|---|
| Weekday miles: | 45.2 |
| Saturday miles: | 0.0 |

MTOA
EXHIBIT E
QUARTERLY REPORT FORM

# QUARTERLY REPORT FOR NEW YORK STATE MASS TRANSPORTATION OPERATING ASSISTANCE

COMPANY:

QUARTER BEGINNING _____ 19___
ENDING _____ 19___

| ROUTE | DATA CATEGORY | JAN APR JUL OCT | FEB MAY AUG NOV | MAR JUN SEP DEC | TOTAL (3 MONTHS) |
|---|---|---|---|---|---|
| | PASSENGERS (INCLUDING REDUCED FARE AND PAID TRANSFERS) | | | | |
| | FARE BOX REVENUE | $ . | $ . | $ . | $ . |
| | WEEKDAY MI. ____ X<br>SATURDAY MI. ____ X<br>LESS OR ADDITIONAL MILES* | ___ WKDYS = ___<br>___ SATDYS = ___<br>___ | ___ WKDYS = ___<br>___ SATDYS = ___<br>___ | ___ WKDYS = ___<br>___ SATDYS = ___<br>___ | |
| | REVENUE VEHICLE MILES | MI. = | MI. = | MI. = | MI. = |
| | PASSENGERS (INCLUDING REDUCED FARE AND PAID TRANSFERS) | | | | |
| | FARE BOX REVENUE | $ . | $ . | $ . | $ . |
| | WEEKDAY MI. ____ X<br>SATURDAY MI. ____ X<br>LESS OR ADDITIONAL MILES* | ___ WKDYS = ___<br>___ SATDYS = ___<br>___ | ___ WKDYS = ___<br>___ SATDYS = ___<br>___ | ___ WKDYS = ___<br>___ SATDYS = ___<br>___ | |
| | REVENUE VEHICLE MILES | MI. = | MI. = | MI. = | MI. = |
| | PASSENGERS (INCLUDING REDUCED FARE AND PAID TRANSFERS) | | | | |
| | FARE BOX REVENUE | $ . | $ . | $ . | $ . |
| | WEEKDAY MI. ____ X<br>SATURDAY MI. ____ X<br>LESS OR ADDITIONAL MILES* | ___ WKDYS = ___<br>___ SATDYS = ___<br>___ | ___ WKDYS = ___<br>___ SATDYS = ___<br>___ | ___ WKDYS = ___<br>___ SATDYS = ___<br>___ | |
| | REVENUE VEHICLE MILES | MI. = | MI. = | MI. = | MI. = |
| | PASSENGERS (INCLUDING REDUCED FARE AND PAID TRANSFERS) | | | | |
| | FARE BOX REVENUE | $ . | $ . | $ . | $ . |
| | WEEKDAY MI. ____ X<br>SATURDAY MI. ____ X<br>LESS OR ADDITIONAL MILES* | ___ WKDYS = ___<br>___ SATDYS = ___<br>___ | ___ WKDYS = ___<br>___ SATDYS = ___<br>___ | ___ WKDYS = ___<br>___ SATDYS = ___<br>___ | |
| | REVENUE VEHICLE MILES | MI. = | MI. = | MI. = | MI. = |
| | TOTAL PASSENGERS (ALL ROUTES) | | | | GRAND TOTAL |
| | TOTAL VEHICLE MILES (ALL ROUTES) | MI | MI | MI | MI |

*EXPLAIN ON REVERSE SIDE OF THIS FORM.

I CERTIFY THAT THE INFORMATION PRESENTED IS TRUE AND CORRECT AND IS IN ACCORDANCE WITH THE PROVISIONS OF THE AGREEMENT BETWEEN THE CARRIER AND THE COUNTY OF SUFFOLK.

AUTHORIZED SIGNATURE _____ TITLE _____ DATE ___/___/___

(6) This contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the County upon the basis of a finding made by the County, the Commission, or the State Division of Human Rights that the Contractor has complied with these non-discrimination clauses, and the Contractor may be declared ineligible for future contracts made by or on behalf of the County, the State or a public authority or agency of the State, until it satisfies the State Division of Human Rights that it has established the provisions of these non-discrimination clauses. Such funding shall be made by the State Division of Human Rights after conciliation efforts by the State Division of Human Rights have failed to achieve compliance with these non-discrimination clauses and after a verified complaint has been filed with the State Division of Human Rights, notice thereof has been given to the Contractor and an opportunity has been afforded the Contractor to be heard publicly before three members of the State Division of Human Rights. Such sanctions may be imposed and remedies involved independently or in addition to sanctions and remedies otherwise provided by law.

(7) The Contractor will include the provision of clauses (1) through (6) in every subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to operations to be performed within the State of New York. The Contractor will take such action in enforcing such provisions of such subcontract or purchase order as the County or New York State may direct, including sanctions or remedies for non-compliance. If the Contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor shall promptly so notify the Attorney General requesting him to intervene and protect the interests of the State of New York.

MTOA
EXHIBIT G (Cont'd.)
NON-DISCRIMINATION - OTHER THAN EMPLOYEES

During the performance of this Agreement, the Contractor agrees as follows:

The Contractor will not on the grounds of age, race, color, creed, sex or national origin:

(a) Deny an individual any services or other benefits provided under the program;

(b) Provide any service(s) or other benefits to an individual which are different, or are provided in a different manner, from those provided to others under the program;

(c) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service(s) or other benefits provided under the program;

(d) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service(s) or other benefits provided under the program;

(e) Treat an individual differently from others in determining whether or not he satisfies any eligibility or other requirements or condition which individuals must meet in order to receive any aid, care, service(s), or other benefits provided under the program.

The Contractor in determining:

(a) The types of services or other benefits to be provided under the program, or

(b) The class of individuals to whom, or the situations in which, such service(s) or other benefits will be provided under the program, or

(c) The class of individuals to be afforded an opportunity to participate in the program, will not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, creed, color, sex or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program in respect to individuals of a particular race, creed, color, national origin or sex.

Agreement Number 01-5631-498-66-00002
DEF, Inc.
Route Y-1
Supplemental Agreement

SUPPLEMENTAL AGREEMENT

THIS SUPPLEMENTAL AGREEMENT is between the COUNTY OF SUFFOLK ("County"), and DEF, Inc. ("Carrier").

WHEREAS, the parties to the Agreement dated August 7, 1985, are desirous of amending certain terms and conditions of said Agreement as described in SUPPLEMENTAL EXHIBIT "A" attached hereto.

TERM OF AGREEMENT: Shall be August 1, 1985, through July 31, 1986.

TOTAL COST OF AGREEMENT: Shall not exceed $500,000.

TERMS AND CONDITION: Shall be as set forth in SUPPLEMENTAL EXHIBIT "A" attached.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the latest date written below.

| | |
|---|---|
| NAME OF CONTRACTOR | COUNTY OF SUFFOLK |
| _____ | _____ |
| TITLE | Deputy Suffolk County Executive |
| DATE: _____ | DATE: _____ |
| APPROVED AS TO FORM:<br>NOT REVIEWED AS TO EXECUTION | APPROVED: |
| _____ | _____ |
| County Attorney | Director of Transportation Operations |
| DATE: _____ | DATE: _____ |

DEF, Inc.
Route Y-1

SUPPLEMENTAL EXHIBIT A
WITNESSETH

WHEREAS, the County and the Carrier entered into an Agreement dated August 7, 1985, to operate public transit sub services on Route Y-1; and

WHEREAS, the Carrier has identified a need for additional back-up equipment for the provision of transit services; and

WHEREAS, the County is desirous of providing said additional transit equipment;

NOW, THEREFORE, IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. The County hereby authorizes the Carrier to acquire two (2) transit vehicles for additional back-up equipment required to meet the needs of providing adequate transit services in an amount not to exceed the sum allocated herein.

Rental for said equipment will be paid monthly by the County to the Carrier for a term of seven months; provided, however, that any subsequent use of said equipment will be provided by the Carrier without further rental charges to the County. Fuel, maintenance and repair of said equipment shall be as otherwise provided for under the terms of this Agreement.

Said payments to the Carrier will be based upon the submission by the Carrier to the County of appropriate support documentation evidencing said rental costs.

Said payments to the Carrier shall commence January, 1986.

A sum not to exceed $22,000 has been allocated for this purpose and the County shall not be liable for any sums above said amount unless and agreement is executed by the parties consenting thereto.

2. Amended Exhibit D replaces Exhibit D of the Agreement dated August 7, 1985, to read: "...maximum of $500,000 subject to audit and a fixed fee of $25,000 for profit, except as otherwise provided herein."

4. The Carrier represents and warrants that he has not offered or given any gratuity to any official, employee or agent of Suffolk County, New York State, or of any political party, with the purpose or intent of securing favorable treatment with respect to the awarding or amending of an agreement, or the making of any determinations with respect to the performance of an agreement, and that the Carrier has read and is familiar with the provisions of Local Law 32-1980.

5. Appendix A attached hereto is made part of this Agreement.

6. Insert C-1, "Requirements for Audit Review", attached hereto shall replace Insert C.

7. All other terms of the existing Agreement shall remain in full force and effect.

- END OF TEXT -

DEF, Inc.
1985-86
Supplemental Agreement

## AMENDED EXHIBIT D
## BUS ROUTE Y-1

| | |
|---|---|
| Fuel* | $ _____ |
| Maintenance & Repairs (includes mechanics' labor, parts, tires, lubes, bus maintenance & other shop expenses) | $ _____ |
| Labor - Drivers | $ _____ |
| Liability Insurance | $ _____ |
| General Administration | $ _____ |
| Part-time Dispatcher | $ _____ |
| Rent - Garage & Parking | $ _____ |
| Printing Schedules | $ _____ |
| Fringe Package - Drivers & Mechanics | $ _____ |
| Total Estimated Expenses | $ _____ |
| Fixed Fee @ 6% of Estimated Expenses | $ _____ |
| Total | $ _____ |

* Based on $1.00/Gallon

Note: Payment for extraordinary repairs to equipment being transferred to the Carrier shall be made by the County to the Carrier upon receipt of documentation evidencing said payment(s).

In the event that it becomes necessary to rent or lease interim vehicles and/or other equipment until County-owned equipment becomes available and ready for transit operations, a separate payment will be made to the Carrier. Said payment will be made to the Carrier upon submission of appropriate support documentation evidencing said lease or rental costs.

In addition, payment for eight (8) fareboxes will be made upon receipt of invoice(s).

Total payment for the above-referenced items shall not exceed $_____.

## APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

(1) Compliance with Regulations: The contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

(2) Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

(3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex or national origin.

(4) Information and Reports: The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Urban Mass Transportation Administration (UMTA) to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information is required or a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the Recipient, or the Urban Mass Transportation Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Recipient shall impose such contract sanctions as it or the Urban Mass Transportation Administration may determine to be appropriate, including, but not limited to:

(a) Withholding of payments to the contractor under the contract until the contractor complies, and/or

(b) Cancellation, termination or suspension of the contract, in whole or in part.

(6) Incorporation of Provisions: The contractor shall include the provisions of paragraphs (1) through (5) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Recipient or the Urban Mass Transportation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor of supplier as a result of such direction, the contractor may request the Recipient to enter into such litigation to protect the interests of the Recipient, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

INSERT C-1

Requirements for Audit Review

a. Prior to authorizing final payment to the CARRIER, the Department shall perform a thorough review of the service performed by the CARRIER under this contract and shall formally certify, in writing, that the CARRIER'S service has been satisfactorily completed in full compliance with the terms and specifications set for thin, or included as a part of, this Contract. Said certification of compliance shall be included with the standard claim documentation and forwarded to the County Comptroller for claim audit and authorization for payment.

b. Any material finding of noncompliance resulting from the compliance review described above shall be referred to the County Comptroller who shall withhold approval of final payment, pending consultation with the Department, and a determination of need for further audit action, and correction of Contract deficiencies.

c. These requirements do not preclude the County Comptroller of his authorized representative from auditing the records of the CARRIER. The records of the CARRIER shall be made available to the County Comptroller or his authorized representative for this purpose.

APPENDIX E -- WESTCHESTER CONTRACT

AGREEMENT made this 1st day of January, 1986 by and between:

THE COUNTY OF WESTCHESTER (hereinafter referred to as the "County") and

ABC Bus Lines, Inc. (hereinafter referred to as he "Carrier")

WHEREAS, the County, pursuant to Local Law No. 8 of 1969 and Local Law No. 11 of 1970, has created and undertaken to operate the Westchester Transit System; and

WHEREAS, the County is designated a "Public Transportation System" by Section 18(b) of the New York Transportation Law as added by Chapter 56 of the Laws of 1975; and

WHEREAS, the County has determined that at the present time the interests of the County and the bus riding public are best served if transit services in the County are provided through private enterprise under the supervision of the County; and

WHEREAS, it is County policy that it is appropriate and desirable to maintain basic levels of service and reasonable fares; and

WHEREAS, the County recognizes that in general such levels of service and fares cannot be maintained without governmental financial support; and

WHEREAS, the County has determined, based on managerial and consulting reports, that the interests of the County and the bus riding public are best served if transit services are contracted for the time being, on an interim basis; and

WHEREAS, the County therefore desires to contract for mass transportation services to be rendered to the public by privately owned and operated mass transportation facilities on the terms and conditions hereinafter described pursuant to the authority granted to it in Section 119-r of the General Municipal Law and Local Law No. 8 adopted by the Board of Supervisors of the County of Westchester on December 1, 1969; and

WHEREAS, the Carrier represents that it is such a privately owned or operated mass transportation facility described in Section 119-r of the General Municipal Law and holds certificates of public convenience and necessity issued by the New York State Department of Transportation necessary and appropriate for the rendition of the services to be performed by it hereunder.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, the parties agree as follows:

ARTICLE I - Definitions

(A) A "vehicle or car mile" of service shall mean a transit vehicle or car operating over one mile of revenue service as such term is defined by the New York State Department of Transportation or the United States Urban Mass Transportation Administration.

(B) "Mass transportation services" shall mean bus service made available to the public in consideration of a fare in scheduled service over a specified route.

(C) "Level of service" shall mean the descriptions of the routes ("routings") and the schedules operated on those routes. The level of service existing on the date of execution hereof shall consist of the routings set forth in Schedule "A" and the operating schedules on file in the Office of the Commissioner of Transportation. The routings and/or operating schedules may be modified by the County based upon the recommendations of the Administrative Policy Committee in accordance with the provisions contained herein. When so modified, the new routings shall be set forth in amendments to Schedule "A", and the new operating schedules shall be filed in the Office of the Commissioner.

(D) A "passenger shall, except as expressly excluded by the provisions of Title 17, New York Code Rules and Regulations, Section 975.3, mean a transit rider from whom or on whose behalf any fare has been collected for the routes designated herein.

(E) "Commissioner" shall mean the Commissioner of Transportation of the County Department of Transportation.

(F) "Uniform System of Accounts" shall mean the uniform systems of accounts for bus corporations as prescribed by the Commissioner of Transportation of the State of New York and as set forth in Title 17, New York Code Rules and Regulations, Chapter VI, Subdivision (D), Article 7, Subarticle (A).

(G) "Actual cost of operation" shall mean only the Carrier's expenses as properly included in the Uniform System of Accounts item numbers set forth in Schedule "B-1", or otherwise allowed to be included as provided in Schedule "B-1", but only to the extent properly allocable on the basis of allocation set forth in said Schedule "B-1" for each such expense and in accordance with with Agreement, to the operation of the routes specified in annexed Schedule "A".

(H) "Revenues" shall mean income to the Carrier directly or indirectly derived from or in connection with mass transportation services, including, without limitation, fares, advertising revenues includable pursuant to this Agreement, any other income as may be reportable to the Uniform System of Accounts item numbers listed in Schedule "B-1" or "B-2", annexed hereto, and any other income as may be reportable therein.

(I) "Excess revenues" shall mean, for the period to which reference is made, all revenue in excess of that amount of the Carrier's actual cost of operation as reported in accordance with Schedule B-1.

(J) "Trip" shall mean from the point of origin of a regularly scheduled route one way to the point of termination.

(K) "Term of this Agreement" shall mean the term as herein provided.

(L) "Person" shall mean any individual, firm, partnership, corporation, association or any other legal entity, or any combination thereof.

(M) "Affiliated person" of another person means (1) any person directly or indirectly owning, controlling, or holding power to vote, 5 per centum or more of the outstanding voting securities of such other person; (2) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; (3) any person directly or indirectly controlling, controlled by, or under common control with, such other person; (4) any officer, director, partner, co-partner, or employee of such other person.

(N) "Relative" shall have its ordinary meaning and shall include without limitation a spouse, ancestor, lineal descendant, brother or sister, spouse or any ancestor, lineal descendant, bother or sister, or lineal descendant of a brother or sister.

(O) "Administrative Policy Committee" shall mean that ad-hoc body created under this Agreement and existing for the purpose of administering this Agreement, creating goals and policy for the transit system, and ensuring Carrier compliance.

(P) "Net Operating Expense" shall mean the amount, if any, that the Carrier's actual cost of operation as reported in accordance with Schedule "B-1" exceeds the amount of Carrier's revenue as reported in accordance with Schedule "B-2.

ARTICLE II - Purpose

The purpose of this Agreement is for the County to provide by contract in accordance with Section 119-r of the General Municipal Law, Local Law No. 8 of 1969 and Local Law No. 11 of 1970 for mass transportation services by privately owned or operated mass transportation facilities at reasonable costs to the public by utilizing the equipment, facilities, and personnel of the Carrier and to state the terms and conditions under said services shall be provided, and the mutual understandings and Agreements of the parties with respect thereto.

ARTICLE III - Term

The term of this Agreement shall commence on January 1, 1985 and terminate on December 31, 1985 unless earlier terminated pursuant to the provisions of this Agreement.

ARTICLE IV - Service

During the term of this Agreement the Carrier agrees to provide the service in accordance with the routings contained in Schedule "A", and the operating schedules for such routes on file in the Office of the Commissioner which routings and/or operating schedules shall be amended by the County from time to time based on the recommendations of the Administrative Policy Committee. The Carrier warrants that it has examined such operating schedules on file in the Office of the Commissioner and agrees that the same are accurate in all respects.

The Carrier shall not change or alter the routes set forth in Schedule "A" or the operating schedules for such routes during the term of the Agreement unless so authorized in writing by the Commissioner or his duly authorized representative and as approved by the Administrative Policy Committee, nor shall the Carrier make

application to any regulatory agency for such changes which would commence during the term of this Agreement except as the Administrative Policy Committee may approve in writing. If the Carrier should fail to comply with the provisions contained herein, the County shall have the right to appropriately reduce the payments to the Carrier which are authorized under the terms of this Agreement.

ARTICLE V - Compensation

The County shall pay compensation to the Carrier for mass transportation service that it shall render during the term of this Agreement as follows:

(A) A Management fee of One Thousand, Eight Hundred ($1,800.00) Dollars for the term of this Agreement, payable in six equal monthly installments.

(B) The County shall, subject to the limits otherwise set forth herein, reimburse the Carrier for net operating expense actually incurred by the Carrier in the operation of the Transportation System in conformity with the terms and conditions of this Agreement. Monthly payments to the Carrier shall be made based upon budget projections of revenues, and expenses shall be subject to adjustment based upon actual revenue received and expenses incurred.

Reimbursement to the Carrier in connection with this paragraph "B" shall be subject to the availability of funds as appropriated by the Westchester County Board of Legislators and shall not exceed the amount allocated to the Carrier for such purposes, which is agreed to be Ninety-Five Thousand ($95,000) Dollars during the term hereof. The County may adjust the amount of such allocation when in its sole discretion it deems it necessary and advisable to do so in order to reimburse the Carrier for (i) extraordinary, unforeseeable expenses; (ii) labor costs resulting from increases in wages and benefits paid to Carrier's employees as a result of collective bargaining Agreements; (iii) modification or expansion of the service to be provided by the Carrier hereunder; and (iv) failure to realize projected revenue from special bus services provided at the direction of the County Transportation Department during Metro North's electrification of the Upper Harlem railroad. The county reserves the right to appropriately reduce the amount of such allocation in the event of a reduction in the services to be provided by the Carrier hereunder whether or not such reduction in service has been implemented with the authorization or consent of the County.

(C) Reimbursement by the County in connection with paragraph "B" above, of the amounts, if any, paid to the below listed owner-officer or stockholder employees of the Carrier for salary and other remuneration shall not exceed the total aggregate amount of Eighteen Thousand, Two Hundred ($18,200) Dollars during the term of this Agreement.

_____(Name)_____, President

Salary and/or additional remuneration paid to such persons from any source, in excess of the amount set forth above shall be deemed excluded salary costs and hall not be reimbursable.

The County shall reimburse the Carrier only for those fringe benefits and/or another allowable goods and services in lieu of salary which are being provided by the Carrier to such persons as of the date of this Agreement. In-

creases in the cost of existing fringe benefits programs including but not limited to pensions, dental insurance, medical insurance, workers' compensation insurance, and disability insurance occasioned by an increase in premiums paid by the Carrier shall be an allowable expense, but the County shall not be obligated to reimburse the Carrier for the cost of any expanded or increased coverage provided to such persons under existing fringe benefit programs. Any expansion or increase in fringe benefit coverage, which results in an increase in the cost attributable to the participation of such owner-officers or stockholder-employees, as listed above, shall be reimbursable only after approval by the Administrative Policy Committee when such expansion of coverage is uniform for all company employees.

(D) Any gain resulting from the sale, transfer, or other disposition of depreciable assets during the term of this Agreement shall be included in revenue shown in Schedule "B-2" in an amount equal to the proportion of any depreciation included by the Carrier as an expense in its uniform system of accounts from and after May 1, 1974 up to the date any such gain is realized, minus any interest paid on such depreciable asset which has not been allowed as an expense under said uniform system of accounts.

(E) The Carrier shall not lease or rent equipment or other assets for use in the operation of the services to be provided hereunder, without the prior written approval of the Commissioner or his authorized designee. In the case of a bona fide emergency, the Carrier may obtain such approval by telephone from the Commissioner or his authorized designee, provided, however, that the Carrier shall forward a written notice within 48 hours thereafter, setting forth the terms and conditions of such rental, the need therefore, and the expected duration.

The reimbursable rental charges for any class or type of equipment or other asset leased from an affiliated person shall not exceed the fair market rental value for real property and for personal property, the costs which would be properly allocable in accordance with the provisions of Schedule "B-1" if the asset were owned by the Carrier.

ARTICLE VI - Payment

(A) All payments due to the Carrier pursuant to Article V of this Agreement shall be made in monthly payments, except as otherwise provided in Article VII of this Agreement. Requests for payment to be made shall be submitted by the Carrier on properly executed claim forms of the County and paid only after approval by the Commissioner. Such claims shall separately state the amounts payable as management fee pursuant to Article V(A) of this Agreement and as reimbursable net operating expense pursuant to Article V(B).

The Commissioner shall approve or disapprove such claims within five (5) working days following receipt of such claims by the Commissioner. Payment of approved claims shall be made within five working days following such approval.

(B) The Carrier shall submit statements certified by its Chief Fiscal Officer and/or accountant which statements shall list the actual cost of operation in accordance with schedule "B-1" and shall list revenue in accordance with Schedule "B-2", such statements to be filed on or before the 20th day of each month for the last preceding month during the term of this Agreement provided that the statement for December for any year may be submitted subject to any year-end adjustments which may be required, except that for any month during the term of

this Agreement is executed and delivered, such statement shall be filed on or before the 20th day of the month following such execution and delivery. If the Carrier should fail to comply with the provisions contained herein, the County shall have the right to appropriately reduce and/or withhold the payments to the Carrier which are authorized under the terms of this Agreement.

(C) Payments made pursuant to this Agreement shall be subject to adjustment in the event that any audit, whether during the term of this Agreement or after the termination of this Agreement, conducted by the County, State of New York or the United States, shall indicate that an overpayment or under payment has been made to the Carrier under this Agreement. Any such overpayment or underpayment shall be corrected by means of separate checks which properly identify the reason for their issuance and any repayment due to the County shall be made within five working days of demand therefore by the County. Nothing herein provided shall be deemed to waive the Carrier's right to contest, by appropriate action, the accuracy or validity of such audit.

(D) In the event that the amount computed pursuant to ARTICLE V indicates the Carrier has excess revenues for any month, such excess revenues shall first be carried back and included in Schedule "B-2" as revenues in preceding months to reduce any payments due under this Agreement and, if no payment is currently due, shall be carried forward as additional revenues for succeeding months during the term of this Agreement. If excess revenues are received by the Carrier in the last month of the term of this Agreement, then adjustment shall be made as set forth in the next preceding sentence and in paragraph (C) of this Article.

ARTICLE VII - Advance Payments

In the event that the Commissioner shall determine that advance payments are required to enable the Carrier to render the services set forth in Schedule "A", the County may make advance payments of compensation to the Carrier on the 1st and 15th days of each month during the term of this Agreement of an aggregate monthly amount which, when added to estimated revenues for such month, shall be estimated by the Commissioner to reimburse the Carrier for its net operating expenses for the month in which such advance may be made. The Carrier shall provide the Commissioner with such information, figures, and documentation as the Commissioner may in his sole judgment require in order to estimate that amount of advance payment required to give the Carrier full reimbursement of its net operating expense for the month in which such advance may be made. Payment of such estimated amounts as established and approved by the Commissioner shall be made upon presentation of duly executed claims to the Department of Finance of the County which claims shall have been first approved by the Commissioner. Such advance payment shall (a) be considered in all respects as payments to the Carrier for any amounts due the Carrier hereunder, and (b) be subject to audit and adjustment, in the same manner as other payments made to the Carrier pursuant to this Agreement.

Payments of compensation hereunder shall in no event exceed fifty (50%) percent of the amount provided for in ARTICLE V(B) of this Agreement before the 1st of June, nor one hundred (100%) percent before the 1st of December, 1985.

ARTICLE VIII - Bond or Undertaking

Notwithstanding any other provision of this Agreement, the Commissioner may require as a condition to approving any claim for prepayment or payment to be made prior to final audit by the County, such bond or undertaking by the Carrier's stockholders or other Affiliated Persons, or other undertaking in lieu thereof, as shall, in the judgment of the Commissioner be reasonable calculated to guarantee and assure the reimbursement by the Carrier to the County of any overpayment made by the County to the Carrier as may be indicated after such final audit, such undertaking to be in a form acceptable to the County Attorney. In the event that the Commissioner shall require and the Carrier shall furnish such undertaking, the Carrier may request the County to complete the final audit within ninety (90) days of notification to the County that the Carrier's books and records are available, complete, and in a form suitable for audit; if the final audit as requested has not been completed within ninety (90) days of such notice and, if the books and records of the Carrier are found by the County to be complete, available, and in suitable form for audit, any undertaking provided by the Carrier as to the period for which such books and records were kept may be released and discharged. In the event that the County shall not complete a final audit within ninety (90) days of such notice, all of the other rights and remedies of the County pursuant to the Agreement are expressly reserved.

If the County should fail to complete a final audit within eighteen (18) months from the date of such notice, and if the books and records of the Carrier are found by the County to be complete, available and in suitable form for audit, the rights and remedies of the County under this Article VIII will be waived except as to any misrepresentation of a material fact or any failure to disclose any material fact appropriate or necessary to make the statements or information provided by the Carrier not misleading.

ARTICLE IX - Administrative Policy Committee

There shall be created for the term hereof, a five member Administrative Policy Committee ("Committee") comprised of the Chief Executive Officer of the Carrier and the Chief Executive Officer, Commissioner of Transportation, Commissioner of Finance, and Budget Director of the County. The Chief Executive Officer of the County shall be the Chairman of the Committee. The Committee shall meet at the County Offices, at the call of the Chairman, or such other places as the Committee may deem appropriate, to discuss areas of concern and resolve issues relating to the administration of the Agreement and the goals and policy of the transportation system operated hereunder. Such areas of concern shall include but not be limited to service and operations, maintenance and preventative maintenance standards, budgeting and financial reporting, data processing, personnel and staffing, fare structures and marketing, and financial and performance audits.

The Committee shall when appropriate appoint a subcommittee, consisting of two or more committee members or their authorized designee, to investigate and make recommendations on any issue. Such recommendations when adopted and agreed to by the Committee shall become a part of this Agreement, provided that nothing contained in this paragraph shall be deemed to limit or impair any right or remedy of the County provided under this Agreement or to render the exercise of such contingent upon the approval of the Committee.

The expenses incurred by the Committee in the performance of its functions hereunder shall be included as reimbursable expenses under Schedule B-1 to the extent budgeted funds are available for such purposes. Such expenses shall include, but not be limited to, costs incurred for travel, meals, consulting fees, testing, and research materials.

ARTICLE X - Certification of Ridership and Mileage

The Carrier, by one of its officers, shall certify to the County, on or before the fifth working day of each month following a month occurring during the term of this Agreement, the total number of passengers carried and the total number of vehicle or car miles of travel for the month preceding. Delivery of such certificate, in form and substance as reasonably required by the County in a manner prescribed by the County Department of Transportation utilizing Schedule "B-3", which is attached hereto and made a part hereof, shall be a condition of the payments to be made hereunder. If any New York State Subsidy payments or portions thereof are denied the County due to the failure of the Carrier to comply with the provisions contained herein, the County shall have the right to proportionately reduce the payments of the Carrier which are authorized under the terms of this Agreement.

ARTICLE XI - Disruption of Service

The Carrier shall use its best effort to immediately notify the County Department of Transportation of any disruption, suspension, cancellation, or delay in excess of thirty (30) minutes of the services to be provided in Schedule "A", which notification shall be made by telephone between the hours of 7:00 a.m. and 6:00 p.m. provided that any such event occurring between the hours of 6:00 p.m. to 7:00 a.m. shall be reported by 10:00 a.m. of the next following day, or shall be made in such other manner as the Commissioner may direct.

In addition, the Carrier shall keep current, up-to-date, within one (1) day of occurrence, records open to the County for immediate inspection of the number of trips suspended or cancelled during the term of this Agreement together with dates and times of suspension or cancellation. Such records shall also include each trip which ran more than thirty (30) minutes later at any point within a trip and the greatest number of hours and/or minutes that such trip ran late at any point together with dates and times of such occurrences. In the event that for any month this Agreement is in effect, such suspended or cancelled service shall have reduced the vehicle or car miles or service certified pursuant to ARTICLE X hereof, by an amount equal to or in excess of one (1%) percent of the total vehicle or car miles of service that the Carrier would have traveled for such month in rendering the mass transportation services specified in Schedule "A", then, and in that event, for each hour or part hour of suspended, cancelled, or delayed service, there shall be a proportionate reduction calculated in the manner hereinafter provided, in the amount of payment pursuant to ARTICLE V(A). The Commissioner may waive such reduction if he determines, in his sole discretion, that such disruption or disruptions were due to circumstances beyond the control of the Carrier, including but not limited to acts of God. In no event shall such circumstances include equipment breakdowns unless the Commissioner in his discretion shall find that such breakdown were unforeseeable and not the result of improper or insufficient equipment maintenance or inspection. If payment for the month in question has already been made, such reduction may be subtracted from the

payment to the Carrier for either of the next two succeeding months. The Commissioner will thereafter be precluded from making such reduction for said month unless the Carrier has failed to comply with the notice and/or record provisions of this Article, in which event such reduction can be made at any time during the term hereof.

A proportionate reduction in payment for suspended, cancelled, or delayed service shall be calculated (a) by obtaining a fraction, of which the denominator is the total number of hours of in-revenue-service to be furnished as set forth in Schedule"A" ("required time in service") for the entire month for which this calculation is being made, and the numerator is the total actual number of hours of in-revenue-service furnished for such month ("actual time in service") and (b) multiplying the fraction so derived by the payment otherwise due the Carrier for such month pursuant to Article V(A) of this Agreement. The "actual time in service" shall be computed by subtracting from "required time in service" the total number of hours on in-revenue-service suspended or cancelled during the month for which this computation is being made and further subtracting the total number of hours delay (to the extent records must be kept of such delay) occurring in such in-revenue-service during the month for which this computation is being made. No such subtractions shall be made for suspended, cancelled, or delayed service, the causes of which are found by the Commissioner to be due to circumstances beyond the good faith control of the Carrier or which the Commissioner has authorized.

Notwithstanding the foregoing, the Commissioner shall give the Carrier five (5) working days notice from the day he is advised by the Carrier of any suspension, cancellation, or delay in service of those incidents which he deems to be in violation of the terms and provisions of this Agreement and the nature of the deduction which he proposes to apply. Failure of the Commissioner to provide said notice shall constitute a waiver of the County's right to make such reductions in payment.

ARTICLE XII - Collection of Fares

Cash fares, tickets, transfers, and tokens shall be collected and counted in accordance with rules, regulations, and directives as may be promulgated by the Commissioner in accordance with reasonable trade practices and to the end that all revenues and actual cost of operations are accurately reported, provided, however, that all revenues so collected shall be deposited into the Carrier's own accounts.

The parties expressly agree that the County shall have the right to make such changes to the Carrier's counting and money room operations as the County shall, in its sole discretion, deem to be in its best interests, including but not limited to (i) appointment of a person or persons to supervise and oversee such operations; (ii) appointment of an appropriate number of County personnel to supervise and perform such functions; and (iii) implementation of a contract with a third party to perform such services. Any increase in the cost of the money room operations, occasioned by any changes made to such operations at the direction of the County pursuant to this paragraph, shall, to the extent that such increases exceed the expenses then currently budgeted for such purposes, be an expense to the County. Nothing contained herein shall be construed to alter or limit the obligations of the respective parties pursuant to any existing Agreement or to impair or diminish any right due to any employee of the Carrier by law or by

contract. The County shall bear the cost of any benefits to be provided to employees of the Carrier who are displaced by such changes, to the extent required under such existing Agreement.

ARTICLE XIII - Maintenance of Existing Fare and Transfer Programs, Collection of Tickets and Tokens

The Carrier shall honor, accept, and implement the County's uniform fare and universal transfer plan as it now exists or may hereafter be amended, as well as any other County sponsored accommodation or promotional programs for reduced fare and/or fare free transportation, including but not limited to rail/bus UniTickets, multi-ride tickets or passes, transportation tokens, and intersystem transfers. Such programs shall be administered by the Carrier in accordance with the eligibility rules and procedures for such programs on file in the Office of the Commissioner of Transportation. Copies of all such rules and procedures shall be furnished to the Carrier.

The Carrier shall honor as full base fare on routes connecting directly with Metro North Commuter Railroad Company ("Metro North") stations, a "UniTicket" Rail/Bus monthly commutation pass to be issued by Metro North, with fare reimbursement to be paid to the Carrier by the County but only out of funds paid to the County by Metro North for such purpose.

The County shall only be obligated to reimburse the Carrier for UniTickets solely to the extent that funds for such purposes are paid to the County by Metro North with the exception that if Metro North should default on its payment obligations under the UniTicket program, the County will reimburse the Carrier for any losses it may incur because of its participation in the UniTicket program for forty-five (45) days following the last month in which the Carrier received UniTicket reimbursement pursuant to this Article. Any further or other losses suffered by the Carrier because of such default will not be reimbursed by the County pursuant to this paragraph.

Persons displaying authorized senior citizen or handicapped identification cards and tendering a Westchester County Transportation ticket, token or cash fare, or persons tendering multiple ride tickets or displaying authorized passes shall therewith be allowed one trip by the Carrier and such persons shall not be charged any additional fare for such trip by the Carrier. The County shall reimburse the Carrier for such trips in accordance with the rates set forth in Schedule "C". Such reimbursement shall be made no later than ten (10) working days from the day the Carrier submits its Schedule "B-3" certification of ridership and mileage as required by ARTICLE X hereof in accordance with such procedures as may, from time to time, be promulgated by the Commissioner. The foregoing notwithstanding, the Commissioner may control and regulate the collection, redemption, handling, and use of such tickets, token passes and other fare programs by written directive. The Carrier shall be bound by the provisions of this Article pertaining to the Westchester County Senior Citizens and Handicapped transportation program only so long as there are sufficient funds budgeted by the County for such programs.

Amounts paid to the Carrier by the County for UniTickets shall be included as revenues for the month in which such UniTicket payments were received. Amounts paid for rides under other fare programs shall be included as revenues for the month in which such rides were taken.

ARTICLE XIV - Use of County-owned Equipment in Other Services

Without limiting any of the rights or remedies of the County and notwithstanding any contrary provision under the existing equipment lease agreements between the County and the Carrier, the Carrier may utilize such equipment acquired by the County and made available to the Carrier, in services other than the mass transportation services listed in Schedule "A", provided that such equipment is not required for services listed in Schedule "A" at the time it is to be used in such other service and provided, further, that the total operating income (after deducting only expenses properly allowable and allocable thereto pursuant to and in the manner of the Carrier's annual report to the Commissioner of Transportation of the State of New York, line 29, "Total Operating Income" as is required to be filed by the Carrier pursuant to Title 17, New York Code Rules and Regulations and/or pursuant to any applicable Federal requirements) derived from using such equipment in other services shall be reported as revenues in Schedule B-2. It is intended that any such income from said other service shall increase revenues but that actual operating cost shall in no event be increased by expenses or charges attributable to such other services. Accordingly, nothing herein provided shall give the Carrier the right to report losses that may be incurred in the use of such equipment in other services as actual costs of operations in Schedule "B-1", and income from such other services shall in no event increase the amount payable by the County to the Carrier hereunder. The Carrier shall not lend, lease, or otherwise permit the use of such County-owned equipment by any other Person or Affiliated Person except as the Commissioner may permit in writing.

ARTICLE XV - Uniform Paint, Destination Signs, and Timetables

It is the intent of the parties to maintain uniformity throughout the County mass transportation system to the extent practicable. To further this purpose, the Carrier shall not undertake to paint any bus (except appropriate maintenance) used in rendering mass transportation services, order any bus destination sign, or print any timetable except with the prior written approval of the Commissioner and pursuant to such conditions and specifications as he may direct, unless the specifications therefore have received the prior written approval of the Commissioner. Failure to respond for ten (10) business days shall be deemed to constitute such approval.

ARTICLE XVI - Roster of Equipment

Annexed to this Agreement is Schedule "D" consisting of a roster of buses and certain other capital equipment having a cost in excess of $10,000, to be used in the performance of the mass transportation services as set forth in Schedule "A". The Carrier represents and warrants that the buses and other such capital equipment listed in Schedule "D" shall be dedicated during the term of this Agreement to the service listed in Schedule "A" and that such bus or other equipment shall not be disposed of, substituted, replaced, or new or additional buses or other equipment acquired or leased without the written approval of the Commissioner, which consent will not be unreasonably withheld. Failure to respond for ten (10) business days shall be deemed to constitute such consent. Except as expressly, and not by implication, permitted by the provisions of ARTICLE XIV, no such bus or other equipment shall be leased or used in other service without the written approval of the Commissioner which shall be given only upon his finding that such

equipment is not required for services listed in Schedule "A" at the time it is to be so leased or used in other service and provided that the revenues derived from such leasing shall be reported in Schedule "B-2" and the total operating income (after deducting only expenses properly allowable and allocable thereto pursuant to an in the manner of the Carrier's annual report to the Commissioner of Transportation of the State of New York, line 29, "Total Operating Income" as is required to be filed by the Carrier pursuant to Title 17, New York Code Rules and Regulations and/or pursuant to any applicable Federal requirements) from such use in other services shall be reported as revenues in Schedule "B-2". It is intended that any income from such leasing or other service shall increase revenues but that actual operating cost shall in no event be increased by expenses or charges attributable to such other service. Accordingly, nothing herein provided shall give the Carrier the right to report losses that may be incurred as the result of such use in other service as actual costs of operations in Schedule "B-1", and income from such leasing or other use shall in no event increase the amount payable by the County to the Carrier hereunder.

ARTICLE XVII - Manning (Positions List)

Annexed to this agreement is Schedule "E" setting forth the titles and the number of persons in each title of all the Carrier's employees including owners, owner-officers, officer-stockholders and officers whose personal services shall be dedicated in part or in whole to the performance of the services set forth in Schedule "A" and whose salaries and other forms of compensation are reported in Schedule "B-1". The Carrier represents and warrants that: (a) Each of such personnel in their positions as listed in Schedule "E" is necessary to the performance of the services as set forth in Schedule "A" and further represents and warrants that each of such personnel will devote during the term of this agreement not less than that proportion of their total employment time to the performance of the services set forth in Schedule "A" as allocated to such services in Schedule "B-1"; (b) personnel required to be listed in Schedule "E" shall not be granted an increase in wages or other forms of compensation (herein a "raise") during the term of this agreement, except:

(i) as may be required in collectively bargained contracts or by past shop practice applicable to members of the bargaining unit,

(ii) an employee not covered by such contracts may be granted a raise for the purpose of maintaining parity with raises given as permitted by clause (i), above, but not to exceed (as to dollar amount or percentage) the largest raise so required to be given to any employee,

(iii) employees of a Carrier not a party to a collective bargaining agreement may be granted raises for the purpose of maintaining parity with raises given as permitted by clause (i) above, but not to exceed (as to dollar amount or percentage) the raises so required to be given to comparable employees.

No modifications to the Manning List excepting normal attrition, dismissals, and hiring as a result of such attrition or dismissals, shall be made by the Carrier during the term of this Agreement, except as the Administrative Policy Committee shall approve in writing. Upon request, the Carrier shall furnish an updated version of Schedule E to the Committee. However, such consent shall not be

required as to temporary substitutions of employees occurring in the normal course of business. In the event of any breach of the representations and warranties made by the Carrier as to the Manning List, without limiting any of the rights and remedies to which the County would otherwise be entitled, the County may make an appropriate adjustment to reported actual cost of operations.

ARTICLE XVIII - Transactions with Affiliates and Relatives

The Carrier shall list and certify to the County in annexed Schedule "F" each transaction with any Affiliated Person and/or Relative of the Carrier, or any relative of any such Affiliated Person, which may result directly or indirectly in any cost, expense, or revenue which would be in part or in whole reportable as actual cost of operations or revenues hereunder. The Carrier represents and warrants that Schedule "F" is an accurate and complete list of each such transaction and that the terms of such transaction are not less favorable to the Carrier than if the Transaction had been negotiated at arm's length with a person other than such Affiliated Person and/or Relative. The Carrier further represents and warrants that the rates of compensation of persons listed in Schedule "F" do not exceed the rate paid for comparable positions held by other persons employed by the Carrier or those paid by other private concerns for comparable positions. The Carrier shall notify the County within five (5) business days of any modification in the transactions listed in Schedule "F" and of any further transactions during the term of this agreement of the nature required to be listed in Schedule "F", and the Carrier shall be deemed to represent and warrant as to these transactions in the same manner as transactions listed in Schedule "F" at the time of the execution of this agreement. In the event of any breach of the foregoing representations and warranties, without limiting any of the rights and remedies to which the County would otherwise be entitled, the County may make an appropriate adjustment to reported actual cost of operations and/or revenues hereunder.

ARTICLE XIX - Licensing and Safety Standards & Compliance with all Laws

The Carrier shall procure and maintain in full force and effect for the term of this Agreement all permits, licenses, and approvals from governmental authorities having jurisdiction required for the lawful operation of this Agreement and the facilities included hereunder.

All equipment used in the operation of this Agreement shall conform with all applicable mandatory safety standards and requirements including but not limited to those of the United States Department of Transportation, the New York State Department of Transportation and the New York State Department of Motor Vehicles. Such equipment and the drivers thereof shall likewise obtain all applicable licensing as such licensing is presently required or may be required in the future during the term of this Agreement.

In addition the Carrier shall comply with all applicable Federal, State and Local Laws, rules and regulations, and Orders, including but not limited to the Labor Law, Workers Compensation Law, Unemployment Insurance Law, Federal Social Law, and all rules and regulations promulgated by the United States Department of Labor and/or the Industrial Commissioner of the State of New York and all amendments and additions thereto.

ARTICLE XX - Accounting and Inspections

(A) It is expressly stipulated and agreed by the Carrier that Title 17, New York Code Rules and Regulations, Section 975.5 shall be complied with in that the Carrier shall maintain its accounting records in compliance with the Uniform System of Accounts and such other accounting standards as determined or required by the Commissioner of Transportation of the State of New York. Cost allocations of inter and intra Carrier/Company operations shall be made in accordance with the New York State Department of Transportation formulae, if any, except as otherwise provided in this Agreement. Any disputes which may arise between the parties as to the classification of particular items of expense or revenue within an item number set forth in the Uniform System of Accounts, or as to the method of allocation of any item of expense or revenue, shall be determined in the first instance by the County in accordance with the Uniform System of Accounts, provided, however, such determination may be submitted by the Carrier for binding review to the New York State Commissioner of Transportation within thirty (30) days following such determination by the County. Nothing herein provided shall be construed to permit the Carrier to claim as an expense to be included in the actual cost of operation an item which is not classified as an expense, nor to exclude from revenue any item which is classified as income or revenue, under any Uniform System of Accounts item number as set forth in this Agreement (including but not limited to Schedule "B-1" and "B-2"). Notwithstanding the foregoing, the Carrier shall also comply with any method of maintaining its accounting records as may be required pursuant to Article XXIV hereof.

(B) The County shall at all times have the right to audit the books and inspect the plants, facilities, and equipment of the Carrier. The Carrier shall also permit the County to conduct such audits and inspections with respect to any company providing services directly or indirectly related to transportation with which the carrier is an affiliated person as defined in ARTICLE I of this Agreement, provided that such audits and inspections shall relate to such services and that such audits or inspections are rationally related to the payments by the County hereunder.

(C) Any expenses or revenues attributable to the period prior to the effective date of this agreement shall not be included in Schedules "B-1" and "B-2". Any expenses or revenues incurred or received by the Carrier after the termination of this agreement shall be reported in Schedules "B-1" and "B-2" and included in the final audit and adjustments provided for in ARTICLE VI hereof.

ARTICLE XXI - Budget Submissions

During the term hereof, the Carrier agrees to meet with the County Budget Director or his authorized designee and make available to him such financial information as may permit him to make reasonable budgetary estimates. In addition, the Carrier will submit to the Commissioner for the year this Agreement is in effect a copy of the yearly report it submits to the New York State Department of Transportation, on or before April 1 of the succeeding year.

On or before the 15th day of July of each year this Agreement is in effect, the Carrier shall submit to the Commissioner a fully completed "Schedule of Revenue and Expenses" setting forth the Carrier's reasonable budget estimates for the coming year. An update of this schedule will be submitted on or before

October 1, together with such other financial information as the County may reasonable require in order to prepare and analyze budget estimates. All schedules and updates will be prepared to the satisfaction of the Commissioner in the format and on the form supplied by the County, a copy of which is attached hereto as Schedule "G" and made a part hereof.

In the event that the Carrier shall fail to submit the required schedules and/or information by the date specified for submission herein; in addition to any other right or remedy to which the County may be entitled, to withhold money due or to become due under this Agreement, the Commissioner shall have the right to deduct as liquidated damages, and not as a penalty, for each day that the Carrier shall fail to submit the required schedules in proper form, an amount equal to five (5%) percent of the monthly management fee payable to the Carrier as set forth in Paragraph 5(a) for good cause shown, waive assessment of such liquidated damages.

ARTICLE XXII - Bus Specifications, Operating and Maintenance Requirements

All buses operated, services renders, and maintenance performed pursuant to this agreement shall comply with the specifications, requirements, and standards as provided by the Administrative Policy Committee.

ARTICLE XXIII - Termination of Agreement

Upon the material breach by the Carrier of any of the terms, covenants, or conditions of this Agreement, the county shall have the right, without restricting or limiting any other right or remedy to which the County may be entitled, upon thirty (30) days notice to the Carrier, to declare this Agreement cancelled, forfeited, and terminated because of such material breach.

ARTICLE XXIV - Government Assistance

The Carrier acknowledges that a significant proportion of the funds which may be made available to it under the terms of the Agreement will be provided by NYSDOT and UMTA. Accordingly, the Carrier agrees to provide all assistance necessary in connection with County applications for such funds and to take such actions, furnish such financial and other reports, and execute such instruments, agreements or other documents as may be necessary or appropriate to enable the County to obtain and/or maintain the County's eligibility for such Government assistance. Without limiting the generality of the foregoing, the Carrier will be obligated to become a party, when such action is necessary to complete any applications for Federal assistance made by the County, to the agreement between the American Public Transit Association and transit employee relations organizations dated July 23, 1975, as well as any required supplemental agreements. Notwithstanding the foregoing, the County agrees to indemnify the Carrier for expenses it may incur in connection with the resolution of claims made under said agreement, including claims, the effect of which may extend beyond the termination date hereof, but only in such instance in which claims arise from changes in mass transportation services instituted by or at the specific request of the County.

In addition, the Carrier will, when necessary, comply with the reporting requirements in Section 15 of the Urban Mass Transportation Act of 1964, as amended. The County will cooperate with the Carrier in providing such information as may be required by the Carrier in connection with this paragraph.

If the County determines at any time during the term of this Agreement that any Government assistance payments or portions thereof have been denied the County or delayed due to the failure of the Carrier to comply with the provisions contained in this Article, after such determination has made the County shall (1) have the right to make proportionate reductions in present and future payments to the Carrier authorized under the terms of this Agreement; or (2) be entitled to proportionate refunds on payments made during the time period for which such Government assistance would have been provided. In the care of delayed funds, the County will reimburse the Carrier for monies withhold or refunded relating to a particular project, if, and to the extent, that any government assistance is ultimately received by the County for such project.

ARTICLE XXV - Carrier Maintenance of Effort

In no event shall the equipment, facilities, and services provided pursuant thereto be a lesser or inferior quality, kind, or nature than the equipment, facilities, and services presently provided by the Carrier.

ARTICLE XXVI - Installation of Cash Fareboxes

In the event that the County shall acquire and make available cash fareboxes, the Carrier shall install such cash fareboxes in a manner and within a prescribed period of time as directed by the Commissioner on all mass transportation vehicles used in rendering mass transportation services pursuant to this Agreement. In addition, the Carrier shall modify its operating procedures, as required, in order to facilitate the use of such cash fareboxes. The Administrative Policy Committee shall make an appropriate adjustment to the carrier's budgeted expenses for any increased cost occasioned by such modifications, including those necessitated by compliance with the provisions of any existing labor agreement.

ARTICLE XXVII - Prohibition of Advertising

The Carrier shall not enter into or renew, if such renewal is under the control of the Carrier, any contract, agreement, or understanding which would require the Carrier to display posters, signs, or other graphic devices on any interior or exterior surface of the buses used in the transit services described in this Agreement without the consent in writing of the County. Upon request, the Carrier shall furnish a schedule, in form acceptable to the County, setting forth the terms and conditions of all such existing Agreements.

ARTICLE XXVIII - Assignment of Agreement

The Carrier agrees not to assign, transfer, pledge, convey, subcontract, lease, or sub-lease or otherwise dispose of this Agreement or any part thereof, or of its right, title, or interest herein or obligations hereunder, or its power to execute such agreement, or any mass transportation services to be provided by the Carrier hereunder to any person without the previous written consent of the County.

ARTICLE XXIX - Code of Ethics

This Agreement may be suspended or terminated by the County if any of the Carriers' activities performed in connection herewith or any payment made hereunder is in conflict with the provisions of Section 74 of the Public Officers Law, Section 800-803 of the General Municipal Law, or County Local Law 12-1970.

ARTICLE XXX - Insurance and Indemnification

The parties acknowledge that certain obligations have devolved upon the County pursuant to the statutory scheme providing for the creation and operation of the Transportation System, as enunciated in recent court decisions including Coleman v. Westchester St. Trans. Co., 57 N.Y. 2d 734 (1982) and related cases.

To the extent required by law, the County shall be responsible for an indemnify the Carrier from all damages, claims, costs, and judgments arising directly out of the services provided under this Agreement when such damages, claims, costs, and judgments are based wholly upon the negligence of the Carrier in the performance of its duties hereunder. Nothing contained herein shall be construed to obligate the County to indemnify the Carrier for willful or intentional tortuous acts, gross negligence or recklessness, or for any claim or cause of action arising directly or indirectly out of activities beyond the scope of the services to be provided under this Agreement.

The parties acknowledge that the County is currently providing automobile liability insurance coverage for independent Carriers providing mass transportation services pursuant to Operating Assistance Agreements. The Carrier agrees to participate in conjunction with other independent Carriers in such County sponsored insurance program as it now exists or may hereafter be modified or amended. The proportionate cost of the Carrier's participation in such insurance program shall be an expense of the Carrier but shall be paid in the first instance by the County, provided that, if the Carrier's revenue for the term hereof shall exceed its net operating expenses, then and in that event, the Carrier shall, upon demand, reimburse the County for such insurance costs. The Carrier agrees to accept as final the County's good faith determination of the allocation of insurance costs among participating Carriers.

In addition, the Carrier shall obtain at its sole cost and expense such other and additional insurance coverage of the type and in the amounts specified in Schedule "H" which is attached hereto and made a part hereof.

ARTICLE XXXI - Non-Discrimination

The Carrier expressly agrees:

(a) That in the hiring of employees for the performance of work under this Agreement or any subcontract hereunder neither the Carrier, subcontractor, nor any person acting on behalf of the Carrier or subcontractor shall be reason of race, creed, color, sex, age, physical disability, or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates; and

(b) That neither the Carrier, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Agreement on account of race, creed, color, sex, age, physical disability, or national origin; and

(c) That there may be deducted from the amount payable to the Contractor by the County under this Agreement a penalty of Five ($5.00) Dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Agreement; and

(d) That this Agreement may be cancelled or terminated by the County, and all moneys due or to become due hereunder may be forfeited for any subsequent violation of this section of the Agreement.

ARTICLE XXXII - Appearances Before Official Bodies

It is understood and agreed by the Carrier that the Carrier bears an affirmative obligation to answer questions specifically or directly relating to this Agreement before any official, board, or agency authorized or empowered to inquire into such matters. This section shall not be construed as barring the Carrier, its directors, officers, or employees from exercising their constitutional privilege against self-incrimination. The foregoing, however, shall not be construed as limiting the rights and remedies of the County in the event of such refusal, and when such body or agency is wholly civil in nature, failure or refusal to fully cooperate with an diligently answer the inquiries of such official, board, or agency may constitute grounds for the termination of this Agreement and/or the exercise of any and all other rights or remedies which the County may have by reason of such failure or refusal.

ARTICLE XXXIII - Documents Forming this Agreement

The Agreement shall consist of this document and the annexed Schedules "A", "B-1", "B-2", "B-3", "C", "D", "E", "F", "G", "H", and any amendments to such Schedules which Schedules or amendment thereto shall be initialed by a duly authorized officer or representative of the Carrier. (Schedules not included in this Appendix.)

ARTICLE XXXIV - Entire Agreement Between Parties

This Agreement and its attachments constitute the entire Agreement between the parties hereto with respect to the subject matter hereof and shall supersede all previous negotiations, commitments, and writings. It shall not be released, discharged, changed, or modified except by an instrument in writing signed by a duly authorized representative of each of the parties.

ARTICLE XXXV - Operating Rights

The existence of this Agreement shall in no way increase or diminish the respective rights of the parties relating to certificates of operating necessity and convenience or route franchise.

ARTICLE XXXVI - Notices

All notices of any nature referred to in this Agreement shall be in writing and sent by registered or certified mail, postage pre-paid, to the respective addresses set forth below or to such other addresses as the respective parties hereto may designate in writing:

To the County:

Commissioner
Department of Transportation
112 East Post Road
White Plains, New York 10601

With a Copy to:

County Attorney
County Office Building, Room 600
148 Martine Avenue
White Plains, New York 10601

To the Carrier:

_____
President
ABC Bus Lines, Inc.
P.O. Box 123
Anytown, New York 10000

ARTICLE XXXVII - Remedies Cumulative

The failure of the County to insist, in any one or more instances, upon strict performance of any term or conditions herein contained shall not be deemed a waiver or relinquishment for the future of such term or condition, but the same shall remain in full force and effect. Payment by the County of any fee or compensation due hereunder with knowledge of a breach of any term or condition hereof, shall not be deemed a waiver of any such breach, and no waiver by the County of any provision hereof shall be implied.

ARTICLE XXXVIII - Approvals

This Agreement shall not be enforceable until signed by all parties and approved by the Office of the County Attorney.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement of the day and year first above written.

THE COUNTY OF WESTCHESTER

By: _____
Commissioner of Transportation

ABC BUS LINES, INC.

By: _____
(Name and Title)

Approved by the Board of Acquisition and Contract of the County of Westchester on the 28th day of December, 1984.

Approved as to form and
manner of execution:

_____
Assistant County Attorney
County of Westchester
1072g



U.S. GOVERNMENT PRINTING OFFICE: 1986-181-763/40044

## NOTICE

This document is disseminated under the sponsorship of the Department of Transportation in the interest of information exchange. The United States Government assumes no liability for its contents or use thereof.

The United States Government does not endorse manufacturers or products. Trade names appear in the document only because they are essential to the content of the report.

This report is being distributed through the U.S. Department of Transportation's Technology Sharing Program.

**DOT-I-86-34**

DOT-I-86-34

# TECHNOLOGY SHARING

A Program of the U.S. Department of Transportation